142-622

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 798. ~~477~~ 135

THE SOUTH BRANCH LUMBER COMPANY, APPELLANT,

vs.

GEORGE OTT, J. B. MEYER, ASSIGNEE OF GEORGE OTT; AUGUSTE MEYER, EXECUTRIX OF CHARLES F. MEYER, DECEASED; CHARLES HILL, ADDIE KLOPPENBURG, AND CHARLES BEIDERBECKE, GUARDIAN OF ADDIE KLOPPENBURG.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED OCTOBER 1, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 798.

THE SOUTH BRANCH LUMBER COMPANY, APPELLANT,

vs.

GEORGE OTT, J. B. MEYER, ASSIGNEE OF GEORGE OTT; AUGUSTE MEYER, EXECUTRIX OF CHARLES F. MEYER, DECEASED; CHARLES HILL, ADDIE KLOPPENBURG, AND CHARLES BEIDERBECKE, GUARDIAN OF ADDIE KLOPPENBURG.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

INDEX.

	Original.	Print
Caption	1	1
Bill of complaint	2	1
Subpœna	15	8
Marshal's return	15½	8
Appearance for defendants	16	9
Answer of George Ott *et al*	19	10
Copy of deed of assignment from George Ott to Charles F. Meyer, April 27, 1886	33	17
Answer of Charles Hill	35	19
Exhibit—Copy of deed of assignment from Geo. Ott to Chas. F. Meyer, April 27, 1886	47	24
Deed from Ott to Hill, February 20, 1886	49	24
Record in case of Hill *vs.* Ott *et al.*	52	27
Petition	52	27
Answer of assignee	55	29
Amendment to answer	57	30

JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 27, 1889.

	Original.	Print.
Answer of Addie Kloppenberg	58	31
Copy of deed of assignment from George Ott to Chas. F. Meyer, April 27, 1886	69	36
Record in case of Kloppenberg *vs.* Meyer, assignee	70	37
Petition	70	37
Deed of Ott to Kloppenberg, February 20, 1886	74	39
Answer	76	40
Amendment to answer	78	41
Stipulation as to substitution of parties defendant	79	42
Stipulation to amend original bill	81	43
Stipulation as to amended bill, &c	82	43
Amended bill	83	44
Stipulation as to taking evidence by complainant, &c.	86	46
Replication to answer of Geo. Ott *et al.*	88	47
Replication to answer of Charles Hill	89	48
Replication to answer of Addie Kloppenberg	90	48
Evidence for complainant	91	49
Testimony of Bleik Peters	91	49
William Heesch	102	55
William Heesch (second deposition)	190	106
Exhibit No. 1—Note of Ott to Kloppenburg, February 20, 1886	196	110
Chattel mortgage	197	110
No. 9—Statement of amount in value of merchandise purchased by Geo. Ott between February 20 and April 27, 1886, &c.	200	112
No. 13—Invoices	201	113
No. 17—Letter of Ott to South Branch Lumber Co., January 23, 1885	208	117
No. 18—Account	209	117
No. 19—Letter of Ott to South Branch Lumber Co., April 8, 1886	210	117
No. 20—Account	211	118
No. 21—Account	212	118
No. 22—Account	214	120
No. 23—Account	215	120
No. 24—Account	216	121
No. 25—Account	217	126
No. 26—Account	218	126
No. 30—Letter of Hoagland to Ott, 2, 11, 1886	226	127
No. 31—Lease between Fuhrman *et al.* & Ott *et al.*, February 26, 1877	227	127
No. 32—Statement of amount paid South Branch Lumber Co.	232	130
Testimony of Francis Beidler	234	131
Exhibit No. 1—Letter of South Branch Lumber Co. to Ott, August 27, 1883	283	159
No. 2—Account	284	160
No. 3—Letter of Ott to South Branch Lumber Co., January 12, 1884	285	160
No. 4—Letter of South Branch Lumber Co. to Ott, December 31, 1884	286	160
No. 5—Letter of South Branch Lumber Co. to Ott, January 17, 1885	287	160

	Original.	Print.
No. 6—Letter of Ott to South Branch Lumber Co., January 23, 1885	288	161
No. 7—Statement of financial standing of Ott	289	161
No. 8—Letter of South Branch Lumber Co. to Ott, January 26, 1885	290	162
No. 9—Letter of South Branch Lumber Co. to Ott, October 2, 1885	291	162
No. 10—Letter of South Branch Lumber Co. to Ott, January 14, 1886	292	162
No. 11—Letter of South Branch Lumber Co. to Ott, February 25, 1886	293	163
No. 12—Letter of South Branch Lumber Co. to Ott, March 16, 1886	294	163
No. 13—Letter of South Branch Lumber Co. to Ott, March 19, 1886	295	164
No. 14—Letter of South Branch Lumber Co. to Ott, April 7, 1886	296	164
No. 15—Account	297	165
No. 16—Account	298	165
No. 17—Letter of Ott to South Branch Lumber Co., April 8, 1886	299	165
No 18—Statement of George Ott	300	166
Testimony of Ernst Claussen	301	166
Testimony of T. W. McClelland	307	169
Exhibit A—Account	333	185
Testimony of Benjamin Gartside	334	186
B. B. Brayton	342	191
George H. Boynton	350	195
Stipulation as to using in evidence transcript of matter of guardianship of Addie Kloppenburg and in attachment suit	356	198
Record in matter of guardianship of Addie Kloppenburg	358	199
Petition	358	199
Bond	359	200
Oath	360	201
Order appointing guardian	361	201
Citation	362	202
Report of guardian	363	202
Order on report	364	202
Letter of Green & Peters to D. R. Richman, February 24, 1882	365	203
Citation	366	204
Account of guardian	368	205
Order on account	370	206
Citation	370	206
Account of guardian	371	207
Order on account	373	208
Bond of Beiderbecke as guardian	374	208
Oath of Beiderbecke	376	209
Order as to appointment of Beiderbecke	376	210
Inventory	377	210
Petition for the support of ward	378	211
Order granting petition	379	211
Petition for attorney fees	380	212
Order granting attorneys' fees	381	212

	Original.	Print.
Clerk's certificate	381	212
General probate order	382	213
Clerk's certificate	283	214
Record from circuit court United States southern district of Iowa in attachment suit	385	214
Transcript from State court	385	214
Petition	386	215
Bond	397	221
Writ of attachment	399	222
Petition for removal	400	223
Bond for removal	402	224
Answer	404	225
Exhibit A—Bond	406	227
Direction to sheriff, &c.	409	228
Sheriff's notices	411	228
Order of removal	415	231
Reply to defendants' cross-petition	416	231
Amendment to answer	418	232
Deed of assignment	424	236
Order granting special execution, &c	427	237
Judgment	428	237
Record in case of Hill *vs.* Ott *et al.*	429	238
Petition	429	238
Exhibit A—Chattel mortgage	432	240
Notice	436	241
Answer	437	242
Amendment to answer	439	243
Clerk's certificate	440	244
Record in case of Kloppenburg *vs.* Meyer, assignee	441	244
Petition	441	244
Exhibit A—Chattel mortgage	444	246
Affidavit of Bleik Peters	447	247
Notice	448	248
Answer	449	249
Amendment to answer	451	249
Clerk's certificate	452	250
Deed of assignment from Geo. Ott to Chas. F. Meyer, April 27, 1886	453	251
Stipulation to use answers of Charles Hill, as garnishee, as deposition in this case	461	255
Deposition of Charles Hill	464	256
Exhibit A—Deed from Ott to Hill, February 20, 1886	470	259
B—Note of Ott to Hill, February 20, 1886	473	261
Statement of assets of George Ott, assigned (part omitted in printing per stipulation and memorandum substituted therefor)	475	262
Stipulation to omit foregoing statement of assets and substitute memorandum therefor	529*a*	262
Memorandum referred to in foregoing stipulation	529*b*	262
Evidence for defendants	539	272
Testimony of William Heesch	539	272
Exhibit X—Letter from Ott to Howell, Jewett & Co., April 26, ——	546	277
Y—Letter from Ott to Moetzel, April 26, ——	547	278

	Original.	Print
Z—Letter from Ott to E. & McC. Lumber Co., April 26, ——	548	278
Testimony of George Ott	549	278
George F. White	623	321
Exhibit A—Letter of Ott to White, April 27, 1886	644	334
Affidavit of Francis Beidler	645	334
Agreement as to foregoing affidavit	646	334
Opinion	647	335
Final decree	670	346
Petition for appeal	673	347
Order allowing appeal	674	348
Bond	675	348
Citation	679	350
Clerk's certificate	682	351
Stipulation as to copies of papers	683	351
Assignment of errors	684	352

1 UNITED STATES OF AMERICA,
Southern District of Iowa, Eastern Division.

Pleas before the circuit court of the United States for the southern district of Iowa, eastern division, at a term thereof begun and holden at Keokuk, in said division, on the third Tuesday, to wit, Tuesday, the 21st day of June, A. D. 1887, before the Honorable J. M. Love, one of the judges of said court, being in the eighth judicial circuit.

SOUTH BRANCH LUMBER COMPANY
against
GEORGE OTT; J. B. MEYER, Assignee of George Ott under General Assignment for the Benefit of His Creditors; Auguste Meyer, Executrix of the Will of Charles F. Meyer, Dec'd; Charles Hill, Addie Kloppenberg, and Charles Beidebecke, Guardian of Addie Kloppenberg. } In Equity.

Be it remembered that heretofore, to wit, on the first day of October, A. D. 1886, a bill of complaint in equity was filed in the office of the clerk of the United States circuit court in and for the southern district of Iowa, eastern division, at Keokuk, in the words
2 and figures following, to wit:

In the Circuit Court of the United States, Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER CO., Complainant,
vs.
GEORGE OTT, CHARLES F. MEYER; CHARLES F. MEYER, Assignee of George Ott under General Assignment for Benefit of Creditors; Charles Hill, Addie Kloppenberg, and Charles Beiderbecke, Guardian of Addie Kloppenberg, Defendants.

To the judges of the circuit court of the United States for the southern district of Iowa, eastern division:

South Branch Lumber Company, a corporation organized and existing under the laws of the State of Illinois and a citizen of the State of Illinois, brings this its bill against George Ott, Charles F. Meyer; Charles F. Meyer, assignee of George Ott under general assignment for the benefit of creditors; Charles Hill, Addie Kloppenberg, and Charles Beiderbecke, guardian of Addie Kloppenberg, and each one of the said defendants is a citizen of the State of Iowa; and thereupon your orator complains and says—

That on the 28th day of April, 1886, your orator filed its
3 petition at law in the district court of the State of Iowa for Scott county against the defendant, George Ott, demanding judgment against said Ott for the sum of thirty-seven thousand one hundred and ninety-one $\frac{69}{100}$ dollars, with interest thereon, accord-

ing to the tenor of certain promissory notes in said petition described, and also upon the account referred to in said petition; which said sum was then and there owing to said South Branch Lumber Company from said Ott, as set forth in said petition, and that a writ of attachment was issued in the said action, and by virtue thereof the said defendants, Charles F. Meyer; Charles F. Meyer, assignee of George Ott under general assignment for benefit of creditors; Charles Hill, and Addie Kloppenberg, were summoned as garnishees; and that by virtue of the laws of Iowa the complainant, the plaintiff in said petition, had a right to sue out said attachment, for that the said George Ott had disposed of his property, in whole or in part, with intent to defraud his creditors, and because all of the said indebtedness from said George Ott to plaintiff was incurred for property obtained under false pretenses, as will more fully appear by reference to the said petition, the affidavit for attachment, and the attachment writ aforesaid, and transcript whereof is now on file in this honorable court in said attachment suit, now pending herein; and, as appears by the return of said writ of attachment, to which reference is made, the said writ of attachment was levied upon certain real estate in Scott county, Iowa, belonging to the said George Ott. Thereafter, upon the application of your orator, the said
4 action of South Branch Lumber Company *vs.* George Ott was transferred from said State court to this court and is here now pending.

Your orator further shows that on or about the 27th day of April, 1886, the defendant, George Ott, executed and delivered to the defendant, Charles F. Meyer, a certain document purporting to be a general assignment for the benefit of said Ott's creditors, which document was filed for record in the office of the recorder of Scott county, Iowa, at 8.57 o'clock a. m. on the 27th day of April, 1886.

Your orator shows that the said pretended assignment for the benefit of the creditors of the defendant, George Ott, was invalid and fraudulent and was not in fact made for the benefit of all the creditors of the said George Ott in proportion to the amount of their respective claims, and the said assignment does not purport upon its face to be for the benefit of all the creditors of the said George Ott in proportion to the amount of their respective claims.

Your orator further shows that at the time of the execution of said pretended assignment the said defendant, George Ott, was largely indebted to the Chicago, Milwaukee and St. Paul Railroad Company, a corporation, and that after the said George Ott had decided and termined to execute an assignment for the benefit of his creditors, and after the said assignment had in fact been prepared, and very soon prior to the delivery and recording of the said assignment, the said George Ott, with intent to prefer the said railway company, did pledge and deliver to the said railway company a large
5 amount of the said Ott's personal property as security for the payment of the debt.

Your orator avers that the said pledge of said personal property for security to the said railway company was by and in writing

signed by the defendant, George Ott, but your orator has not possession or control of the said writing.

Your orator further avers that the said defendant, George Ott, on or about the 20th day of February, 1886, executed a certain chattel mortgage to Charles Hill, of Davenport, upon all his stock of goods, wares, and merchandise, consisting of the general stock of glass, glass windows, doors, window-frames, blinds, sashes, and whatsoever other personal property was then kept in said Ott's building at No. 410 West Front street, and the entire stock of lumber and manufacturing materials then on hand and kept upon the premises of said Ott's factory in Davenport, Scott county, Iowa, as well as all goods, wares, and merchandise, lumber and manufacturing material that might thereafter be purchased by said Ott during the existence of said mortgage to replenish the stock or stocks, reserving to him, the said Ott, the right to sell and manufacture respectively said stock in the ordinary course of his business. The said mortgage purported to secure a note of three thousand dollars, executed by the said George Ott to the said Charles Hill, dated February 20th, 1886, and due one day after its date.

Your orator avers that while the said mortgage was by the said Ott left in the possession of said Charles Hill soon after the
6 date of the execution thereof, yet it was in fact agreed between the said Ott and the said Hill that the said mortgage should be withheld from record by the said Hill, and should not be recorded until he, the said Ott, should direct the said Hill that he might record the said mortgage.

Your orator avers that said mortgage thus remained under the control of the said Ott, and, in pursuance of the said agreement, could not be recorded until he, said Ott, should so direct, and that the said Ott did not direct that the said mortgage should be recorded until after he had fully and definitely determined to execute an assignment for the benefit of his creditors, and that he then directed the said Hill to have the said mortgage recorded, which was accordingly done by the said Hill on the 26th day of April, 1886, at 5 o'clock and 7 minutes p. m. of said day, and your orator charges that then, for the first time, was the said mortgage delivered to the said Hill in contemplation of law.

Your orator further charges that while the said chattel mortgage to the said Charles Hill purported to secure a note falling due one day after its date, yet in truth and in fact the said George Ott was not indebted to the said Hill at that time in any sum of money, and the only consideration for such mortgage was an alleged contingent liability of the said Charles Hill as indorser upon certain promissory notes of the said George Ott held by the First National Bank of Davenport, Iowa.

Your orator further avers that the said defendant, George
7 Ott, on or about the 20th day of February, 1886, was and for some time prior thereto had been the duly appointed and qualified guardian of the property of the defendant, Addie Kloppenberg, a minor, and that on the said day the said George Ott, in his individual capacity, executed to the said Addie Kloppenberg a cer-

tain chattel mortgage upon all his stock of goods, wares, and merchandise, consisting of a general stock of glass, glass windows, doors, window-frames, blinds, sashes, and whatsoever other personal property was then kept in his brick building, No. 410 West Front street, and the entire stock of lumber and manufacturing material then on hand and kept upon the premises of said Ott's factory in Davenport, Scott county, Iowa, as well as all goods, wares, and merchandise, lumber, and manufacturing materials that might thereafter be purchased by said Ott during the existence of said mortgage to replenish the stock or stocks, reserving to him, the said Ott, the right to sell and manufacture respectively said stocks in the ordinary course of his business. The said mortgage purported to secure a note of three thousand five hundred dollars, dated February 20th, 1886, and due one day after its date.

Your orator avers that the said George Ott retained possession and control of said mortgage and withheld the same from record, and that he, the said Ott, filed or caused to be filed for record the said chattel mortgage on the 26th day of April, A. D. 1886, at 5 o'clock and 6 minutes p. m., in the recorder's office of Scott county, Iowa, when for the first time, as your orator charges, the said mortgage was delivered to the said Addie Kloppenberg in con-

8 templation of law.

Your orator avers that the said mortgage was not delivered until after the said defendant, George Ott, was fully and definitely determined to execute an assignment for the benefit of creditors. Your orator avers that the delivery of the said two chattel mortgages at the time stated was made by the said Ott at the time when he was about to make a general assignment of his property for the benefit of his creditors; that he then was and for a long time had been utterly insolvent, and that the delivery of the said two mortgages at the time and under the circumstances stated was a preference of the said mortgagees, creditors of the said George Ott, and was in fact part of the general assignment of his property, and that such general assignment was not made for the benefit of all his creditors in proportion to the amount of their respective claims.

Your orator further avers that the said two chattel mortgages were and are fraudulent and voidable as to your orator, an attaching creditor, because of the provisions in said mortgages permitting the mortgagor, said defendant Ott, to retain possession of and sell and manufacture the mortgaged property in the ordinary course of his business, and for the further reason that the said defendant Ott agreed with the mortgagee, Charles Hill, that the said mortgage should be withheld from record, and because said Ott, as guardian of the said Addie Kloppenberg, withheld from record the mortgage which he had executed to her.

9 Your orator further avers upon information and belief that on the 20th day of February, 1886, the date of the execution of the said mortgages, the defendant, George Ott, was and ever since has been utterly insolvent, and that the said defendant Ott then intended and designed to execute a general assignment for the benefit of his creditors, and that the execution of said mortgages on the 20th of

February, 1886, was with the design and intention upon the part of the said Ott to prefer the said mortgagees in making the said general assignment.

Your orator further avers that it had no notice, knowledge, or suspicion that the said George Ott had executed either of the said mortgages until after the same had been filed for record on the 26th day of April, 1886, and that between the said 20th day of February, 1886, and the 26th day of April, 1886, your orator sold and delivered to the said George Ott goods, wares, and merchandise of large value, and also took from the said George Ott, between said dates, new promissory notes to a large amount in extension of other notes falling due from the said George Ott to your orator during the said period, and that no part of the amount due upon the sale of said goods or upon the extension of said notes has been paid.

Your orator further avers, upon information and belief, that shortly before the execution of the said assignment and in contemplation thereof, and after the said defendant Ott had determined to make such assignment, he, the said defendant Ott, made payment in whole or in part to some of his creditors and pledged to
10 certain other of his creditors portions of his personal assets with the intent to prefer them.

Your orator further avers that immediately after the execution of said assignment on the 27th of April, 1886, to the said Charles F. Meyer, as assignee, the said Meyer accepted the said trust and took possession of the property of the said Ott and published notice, as required by law, of his appointment as assignee on the 27th day of April, 1886; that thereafter, on or about the 14th day of May, 1886, the said defendant Meyer filed his bond, as required by law; that ever since the said date the said Meyer has been in possession of the said property, as assignee as aforesaid, and has been manufacturing and selling the stock of goods in his possession, and has also been purchasing additional stock from time to time.

Your orator further avers that the actual cash value of the assets held by the said Meyer, as assignee, and admitted without contest to belong to the defendant, George Ott, or his estate would not exceed, as your orator is informed and believes, the amount of your orator's just claim and demand against the said George Ott; that the aforesaid pretended assignment and chattel mortgages respectively were made and contrived by the said George Ott as part and parcel of an unlawful and fraudulent scheme on the part of said Ott to hinder, delay, and defraud certain of the creditors of the said Ott, and especially to hinder, delay, or defraud your orator as one of the principal creditors of the said George Ott; that the said
11 Ott, in having said chattel mortgages, respectively, withheld from the records and substantially suppressed as aforesaid until he was about to execute said pretended assignment, contemplated and attempted to perpetrate a fraud upon and to defeat the laws of the State of Iowa concerning voluntary assignments for the benefit of creditors; that the said George Ott, Charles F. Meyer, Charles Hill, Addie Kloppenberg, and Charles Beidebecke are wrongfully setting up claim of rights to hold under said pre-

tended assignment and chattel mortgages respectively, and have wrongfully failed to turn over to the sheriff the property of the said Ott subject to the said attachment and claimed by them respectively.

Your orator further avers that the said Charles Hill and the said Addie Kloppenberg, by her guardian, Charles Beidebecke, who has been appointed as guardian of the said Addie Kloppenberg to succeed George Ott, who has resigned as her guardian, are making claims upon the said assignee for the payment of the amount of their pretended mortgages hereinbefore referred to; that said Charles Hill has commenced an action in the circuit court of Iowa for Scott county against said Charles F. Meyer to foreclose his said chattel mortgage. The said Addie Kloppenberg, by Charles Beidebecke, her guardian, has commenced an action in the circuit court of Iowa for Scott county against the said Charles F. Meyer, assignee, seeking to recover the said sum of three thousand five hundred dollars evidenced by said mortgage and note.

Your orator further avers that claims and demands to a
12 very large amount have been filed with the assignee of the said George Ott by numerous creditors, and that at the expiration of six months from the date when the said Charles F. Meyer gave notice of his appointment as assignee said assignee expects and intends to make dividends among the said creditors from the proceeds of said assets; that before your orator's demand and lien can be established and enforced in the proceedings at law the said assets in the hands of the assignee will be diminished and disposed of, so that your orator will be unable to realize any considerable portion of its claim and demand; that the said Charles F. Meyer is not personally financially responsible and able to pay any judgment which your orator might obtain against him under its garnishment proceedings, and that your orator can hope to realize upon any judgment which it may obtain against said Meyer as garnishee only from the property and funds which may be in his hands pertaining to said assignment. Your orator prays that the defendants and each of them may be required to answer this bill of complaint as fully and particularly as if each of them were specially interrogated, but not under oath, an answer under oath being hereby expressly waived; that a receiver be appointed to take possession of the assets of the said George Ott in possession and under control of Charles F. Meyer, assignee as aforesaid, to hold the same until the lien and claim of your orator thereto may be adjudicated and until the further order of this court; that the defendants, Charles Hill and Addie Kloppenberg, be enjoined and restrained from collecting or receiving from said Charles F. Meyer, assignee as
13 aforesaid, any payment on account of their pretended liens under said mortgages executed to them as hereinbefore stated or on account of any transaction which they may have had with said defendant, George Ott; that the said mortgages and assignment be declared to be fraudulent, and that they may be set aside as wrongfully obstructing the said attachment and garnishment in favor of your orator, and that your orator may have such other

and further relief in the premises as the nature of its case may require and to your honors shall seem meet. May it please your honors to grant unto your orator the writ of subpœna of the United States of America, to be directed to the said George Ott; Charles F. Meyer, assignee of George Ott under general assignment for benefit of creditors; Charles Hill, Addie Kloppenberg, who is an infant under the age of fourteen years, and Charles Beidebecke, guardian of Addie Kloppenberg, thereby commanding them and every of them, at a certain day and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet; and your orator shall ever pray.

(Signed) SOUTH BRANCH LUMBER CO.
FRANCIS BEIDLER, *Sec'y*
FRANK J. SMITH & HELMER,
52 *Dearborn St., Chicago,*
COOK & DODGE, A. J. HIRSCHILL,
Solicitors for Complainant.

E. E. COOK, *Of Counsel.*

14 STATE OF ILLINOIS, }
County of Cook, } ss:

Francis Beidler, being first duly sworn, upon his oath says that he is the secretary of South Branch Lumber Co., complainant in the above-entitled cause; that he has read the foregoing bill of complaint and knows the contents thereof; that the matters and things therein stated are true to his own knowledge, except as to those matters therein stated upon information, and he believes them to be true.

(Signed) FRANCIS BEIDLER.

Subscribed and sworn to by the said Francis Beidler before me this 25th day of September, 1886.

(Signed) CHRISTIAN F. WIEHE,
[SEAL.] *Notary Public.*

Endorsed: Filed Oct. 1, 1886. H. K. Love, clerk.

Thereupon, afterwards, on the same day, to wit, October 1st, A. D. 1886, subpœna in chancery was issued in the above-named cause; which, with the return of service endorsed thereon, read in words and figures following, to wit:

15 *Subpœna in Chancery.*

UNITED STATES OF AMERICA, }
Southern District of Iowa, Eastern Division. }

The President of the United States to George Ott, Charles F. Meyer; Charles F. Meyer, assignee of George Ott under general assignment for benefit of creditors; Charles Hill, Addie Kloppenberg, and Charles Beidebecke, guardian of Addie Kloppenberg, all citizens of Iowa:

We command you and each of you that you appear before the judge of the circuit court of the United States for the southern district of Iowa, eastern division, at Keokuk, on the first Monday of November, it being the 1st day of November next, A. D. 1886, to answer to the bill of complaint of South Branch Lumber Company, a corporation organized and existing under the laws of the State of Illinois and a citizen of Illinois, this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of such judgment being pronounced against you by default.

To the marshal of the southern district of Iowa.

Returnable to the November rule day, it being Monday, the first day of November, A. D., 1886.

Witness the Honorable Morrison R. Waite, Chief Justice
[SEAL.] of the Supreme Court of the United States of America, at the city of Keokuk, this 1st day of October, 1886, and of the Independence of the United States of America the 111 year.

H. K. LOVE,
Clerk U. S Circuit Court,
By ERIE J. LEECH, *Deputy.*

MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of
[SEAL.] said court, at Keokuk aforesaid, on or before the day which the above writ is returnable, as above stated, the complaint will be taken against them as confessed and a decree entered thereon accordingly.

H. K. LOVE,
Clerk U. S. Circuit Court,
By ERIE J. LEECH, *Deputy.*

15½ [Endorsed:] No. —. Subpœna in chancery. Circuit court of the United States, southern district of Iowa, eastern division, Keokuk. South Branch Lumber Co. *vs.* George Ott. Returnable to rule day, first Monday in November, A. D. 1886. H. K. Love, clerk. Filed Oct. 18th, A. D. 1886. H. K. Love, clerk. Smith & Helmer & Cook & Dodge, comp'ts' sol-.

[Endorsed:] This writ came into my hands for service on the — day of ——, A. D. 188-, and I served the same on the within-named —— ——, on the — day of ——, 188-, by delivering a true copy of

the same to —— ——, at ——, in the county of —— and State of Iowa. —— ——, U. S. marshal; —— ——, deputy.

Marshal's fees:

Mileage, 143 miles	$8 58
Service on 6	12 00
Copy " 6	3 00
	$23 58

SOUTHERN DISTRICT OF IOWA, *ss:*

—— ——, of ——, is hereby appointed special deputy U. S. marshal to serve this writ.

—— ——,
U. S. Marshal.

This writ came into my hands for service Oct. 4, 1886. Served the same on the within-named defendants, Geo. Ott, Charles F. Meyer; Charles F. Meyer, assignee of Geo. Ott; Charles Hill, Addie Kloppenberg, Charles Beidebecke, guard. of Addie Kloppenberg, Oct. 6th, 1886, at Davenport, Scott Co., Iowa, by delivering to each of said def'ts a true copy of this writ at the time and place above named.

EDW. CAMPBELL, JR., *U. S. M.*
S. K. WEST, *Dept.*

16 Afterwards, to wit, on the 23rd day of October, A. D. 1886, appearances were entered for defendants in the cause, reading each in words following, to wit:

In the Circuit Court of the United States for Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY
vs.
GEORGE OTT, CHARLES F. MEYER; CHARLES F. MEYER, Assignee of George Ott under General Assignment for Benefit of Creditors, *et al.* } In Chancery.

The clerk of above-named court will please enter our appearance as solicitors for the defendants, George Ott, Charles F. Meyer, and Charles F. Meyer, assignee of George Ott under general assignment for benefit of creditors, in above-entitled cause.

(Signed) BILLS & BLOCK,
Solicitors for said Defendants.

Endorsed: Filed Oct. 23, 1886. H. K. Love, clerk.

17 In the Circuit Court of the United States for Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY
vs.
GEORGE OTT, CHARLES F. MEYER; CHARLES F. Meyer, Assignee of George Ott under General Assignment for Benefit of Creditors, *et al.* } In Chancery.

The clerk of above-named court will please enter my appearance as solicitor for the defendants, Addie Kloppenberg and Charles Beiderbeke, guardian of Addie Kloppenberg, in above-entitled cause.

(Signed) BLEIK PETERS,
ERNST CLAUSSEN,
Solicitor- for said Defendants.

Endorsed: Filed Oct. 23, 1886. H. K. Love, clerk.

18 In the Circuit Court of the United States for Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY
vs.
GEORGE OTT, CHARLES F. MEYER; CHARLES F. Meyer, Assignee of George Ott under General Assignment for Benefit of Creditors, *et al.* } In Chancery.

The clerk of above-named court will please enter my appearance as solicitor for the defendant, Charles Hill, in above-entitled cause.

(Signed) ERNS. CLAUSSEN,
Solicitor for s'd Defendants.

[Endorsed:] Filed Oct. 23, 1886.

19 Afterwards, to wit, on the 6th day of December, A. D. 1886, it being at December rule day, 1886, an answer was filed in the aforesaid case; which answer reads in words and figures as follows, to wit:

In the Circuit Court of the United States for the Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY, Complainant,
vs.
GEORGE OTT, CHARLES F. MEYER; CHARLES F. MEYER, Assignee of George Ott under General Assignment for Benefit of Creditors; Charles Hill, Addie Kloppenberg, and Charles Beidebecke, Guardian of Addie Kloppenberg, a Minor. } In Equity.

The answer of George Ott, Charles F. Meyer, and Charles F. Meyer, assignee of George Ott under general assignment for benefit of creditors, to the bill of complaint of South Branch Lumber Company, plaintiff.

These defendants respectively, now and at all times hereafter sav-

ing to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say—

20 That for many years prior to the 27th day of April, 1886, said George Ott was engaged at Davenport, Scott county, Iowa, in the business of buying and selling and manufacturing sash, doors, blinds, &c.

That on or about said 27th day of April, 1886, said George Ott became and was unable to meet all his obligations and debts made in said business promptly or in full, and he therefore did, on the said 27th of April, 1886, make, execute, and deliver in writing to the defendant, Charles F. Meyer, as assignee, a general assignment of all his, said Ott's, property, both real and personal and wherever situated, in trust for the benefit of all the creditors of said George Ott, to be divided among them *pro rata* under the provisions of chapter seven (7), title fourteen (14), of the Code of Iowa, as by reference to a copy of said assignment, attached hereto and made by reference part of this answer, will fully and at large appear.

That said written assignment contains an inventory of all the property of said Ott and a list of his creditors, with the amount due each, and was duly acknowledged before a notary public, so as to entitle the same to be recorded, and said written assignment having been so made, acknowledged, and delivered to said Charles F. Meyer, assignee, on said 27th day of April, 1886, was, on said 27th day of April, 1886, duly filed for record, and was recorded with the recorder of deeds of said Scott county, Iowa, where said Ott had for a long time and then resided.

That on said 27th day of April, 1886, and as soon as said
21 deed of assignment was by said Ott delivered to said Meyer, he, said Meyer, accepted said trust and at once took possession of all the property of every kind of said Ott, except what was and is exempt from the payment of debts by the laws of this State, and at once proceeded to carry out and execute said trust as is provided by the statute of the State of Iowa, and that said defendant Meyer, ever since that time, has had and now has said property in the execution of said trusts under the provisions of said chapter seven (7) of title fourteen (14) of the Code of Iowa.

That thereafter and on the 14th day of May, 1886, said defendant Meyer, as such assignee, did file with the clerk of the circuit court of said Scott county, Iowa, where said assignment was recorded, a true and full inventory and valuation of all the property of said estate of said George Ott under oath, so far as the same came to his knowledge, and then and there entered into bonds to said clerk for the use of the creditors of said Ott in double the amount of said inventory and valuation of said property, with good and sufficient sureties, approved by said clerk of the said court, for the faithful performance of said trust; and that said defendant Meyer, as such assignee, did forthwith and on said 27th day of April, 1886, give notice

of said assignment by publishing a notice of the same in a newspaper in said Scott county for six weeks, and did at the same time send a printed copy of said notice by mail to each creditor of
22 said Ott, directed to such creditor at his usual place of residence, according to the provisions and requirements of section 2119 of the Code of Iowa.

And that at the expiration of three months from the time of first publishing such notice said defendant, Meyer, as such assignee, did file his report in writing in said circuit court of Iowa, giving a true and full list, under oath, of all such creditors of said Ott as claimed to be such, with a statement of their claims, and also an affidavit of the publication of said notice of said assignment and a list of said creditors and their places of residence to whom said notices had been sent by mail and the date of mailing, all duly verified, as is required by section 2120 of the Code of Iowa.

That within the said three months from the time of first publishing said notice of assignment creditors of said Ott to the number of one hundred or more presented their claims under oath, as is provided by said statute, to said assignee and in said circuit court of Iowa, asking to share in the proceeds of the property so assigned, and said claims amount in the aggregate to more than the sum of one hundred thousand dollars.

That said defendant, Meyer, as such assignee, has proceeded to execute said trust as is provided by law and the practice of said circuit court of Iowa, and has converted most of the available property of said Ott so assigned to him into money and holds the same as such assignee subject to the orders, jurisdiction, and judgment of said circuit court of Iowa.

That said matter of said assignment was, when said
23 inventory and valuation were filed in said court, duly docketed in and by said court as case numbered 5330 on the docket of said court, and the same is now pending in said court, as is provided in and by said chapter 7, title 14, of the Code of Iowa; that under said law said assignee was and is compelled to make a dividend of the money in his hands as such assignee among said creditors at the expiration of six months from the time of the first publication of said notice of said assignment, and that said six months expired on the 27th day of October, 1886; that on the 4th day of October, 1886, defendant Meyer, as such assignee, obtained from said circuit court of Iowa an *ex parte* order excusing him from making any such dividend until all litigation seeking to hold him personally responsible to any creditor of said Ott for said funds so in his hands as such assignee should be finally disposed of and determined.

That on the 18th day of November, 1886, several of the said creditors of the said Ott who have presented their claims within the three months from the giving of said notice of assignment filed in said circuit court of Iowa a petition and notice in writing asking said court to set aside and revoke said order of October 4th, 1886, and that this assignee be ordered to at once make a *pro rata* dividend of all the funds in his hands as such assignee among the said

creditors according to the said laws of the State of Iowa, and that said petition and motion is still pending in said court.

24 And these defendants further aver that, in accordance with the provisions and statute laws of the State of Iowa, full and complete jurisdiction of and over the matter of said assignment and of and over the said trust fund so held by defendant Meyer as such assignee, and of and over the execution of said trusts, and of and over the defendant Meyer personally as such assignee and trustee as aforesaid, was and is vested in the said circuit court of the State of Iowa in and for Scott county, which court now has cognizance of and exclusive jurisdiction of the same, with ample power, authority, and jurisdiction in said court to control and enforce the execution of said trusts, to decide upon the claims and rights of all parties claiming an interest in or lien upon said trust fund, and right and justice fully to administer in the premises.

That under the laws of the State of Iowa said fund so in the defendant Meyer's possession as such assignee is a fund in said circuit court of Iowa, and said defendant, Meyer, as such assignee, holds the same as an officer of said circuit court of Iowa and subject to the orders and supervision of said court the same as if he so held said fund as a receiver of and appointed by said court.

And therefore these defendants aver that this honorable court has no jurisdiction to entertain the bill of complainant in this suit, which seeks to take such fund from the prior possession and jurisdiction of said circuit court of Iowa and to dispose of the same in disregard of the orders and judgment of said court now having the possession of and exclusive jurisdiction over the same.

25 These defendants further allege that the said attachment of complainant referred to in the bill of complaint in this suit was sued out, issued, and levied by garnishing the defendant Meyer after said assignment was made, delivered, and recorded and after defendant Meyer as such assignee had taken possession under and in pursuance of the same of all the property of said Ott, and that by the laws of the State of Iowa said complainant acquired no lien upon or interest whatever in said property so assigned by reason of said pretended attachment and garnishment, and had not and has not any such lien on or interest in said property.

And, further answering said complaint, these defendants deny that at the time said complainants sued out its said writs of attachment, to wit, on the 28th day of April, 1886, said George Ott had disposed of his property in whole or in part with intent to defraud his creditors, and denies that all or any part of the said indebtedness from said Ott to said complainant on which said attachment cause was brought was incurred for property obtained under false pretences.

These defendants deny that the said assignment was made by said Ott to said defendant Meyer April 27th, 1886, was or is invalid or fraudulent, and deny that it was not made for the benefit of all the creditors of said Ott in proportion to the amount of their respective claims; and these defendants aver that said assignment was made for the equal benefit of all the creditors of said Ott, and so states on its face.

26 These defendants deny that after said Ott had determined to make an assignment for the benefit of his creditors he did, with intent to prefer one of his creditors, to wit, the Chicago, Milwaukee & St. Paul Railway Company, pledge and deliver to said company a large or any amount of his, said Ott's, personal property as security for the debt due said company.

But defendants allege that for many years before making of said assignment said railway company, which has a railroad and station at said city of Davenport, had been in the habit of bringing to said city to be delivered to said Ott large quantities of goods, wares, and merchandise used and sold by him in his said business, and that said Ott paid to said company its charges for transportation of said property; that it was always one of the rules of said company that such freight and charges should be paid before the said property so transported should be delivered to the consignee; that said railway company was and is a common carrier; that it was at times not convenient for said Ott to pay the freight and charges on such property so transported and consigned to him at the time when it was so delivered to him; and it was the practice and custom for said Ott to leave large quantities of such property in the cars of said company for many days on the side tracks of said company, and that long prior to said 27th day of April, 1886, said Ott and said railway company orally agreed between themselves that if said company should at any time allow said Ott to receive and remove any such property so transported without first paying the freight and charges on the same, then said com-

27 pany should have a lien on and at any time have the privilege of holding any property of said Ott in its cars, on its tracks, or side tracks as a pledge or security for all the amount or amounts at any time due from said Ott to said company for freight or charges, not only on said property so held, but also on any property which had been removed by said Ott without paying the freight and charges on the same; and that just before said assignment was made the agent of said railway company at Davenport, with whom all of said business had been transacted, requested said Ott to give him some evidence in writing of his right to hold said property in pursuance of said oral contract, and in compliance therewith said Ott did, before said assignment was made or delivered, make and give to said agent a writing as follows, to wit:

"Mr. White, agent, &c.:

"I consent that you may hold the four car-loads of glass now in possession of the C., M. & St. Paul R. R. Co. to secure you for the freight I owe your said company until the same shall be paid.

"April 27th, 1886.

"GEORGE OTT."

That on the morning of the 27th day of April, 1886, when said Ott had fully determined to make said assignment, said company held the four car loads of glass and had the right to hold the same as security for about $600.00 ($862.55) due from said Ott to it as freight

and charges on said glass, and also on other property which said Ott had removed under said oral agreement; that after he had determined to make said assignment it would have been committing a
28 fraud on said company and would have been obtaining the possession of said property from said company under false pretenses if said Otto had demanded, received, or removed the same, knowing that he could not and would not be able to pay the amount so due said company.

That defendant Meyer as such assignee, soon after said assignment, paid the amount due said company from the funds in his hands as such assignee and released said property from said lien, and now has the proceeds of the same.

That in respect to the two chattel mortgages mentioned in plaintiff's bill, made by said Ott February 20th, 1886, one to Charles Hill and one to Addie Kloppenberg, these defendants deny that at the time when said mortgages were so made said Ott intended to make a general assignment for the benefit of his creditors, and deny that said mortgages were or that either of them was made with intent on the part of said Ott to prefer the said mortgagees over his other creditors in making his said general assignment. These defendants deny that the said two mortgages were made by the said Ott with intent to give a preference to said mortgagees over the other creditors of said Ott, but allege that the same were given for the sole purpose of securing the debts and liabilities to said mortgages, as stated in said mortgages, and as to the mortgage to said Addie Kloppenberg these defendants allege that some time prior to the making of said mortgage said Ott, as guardian of said Addie (who was and is a minor), had in his possession the amount named in
29 said mortgage belonging to said minor, and that it was his legal duty as such guardian, and he was so ordered by the probate court of said county, to invest said money in some way safely secured by mortgage for the benefit of said minor.

That instead of doing so he put the same into his said business and used the same in carrying on his said business; that on or about said 20th day of February, 1886, it became and was necessary for said Ott as such guardian to make to said probate court of said county a report as to how he had invested said money and the present condition of said fund, and by the advice of the attorney for said minor he gave said mortgage to her to secure said trust fund so in his hands and to enable him to make a proper legal report to said probate court; that defendant Meyer as such assignee received said mortgaged property and has converted the same into money and now holds the same as such assignee.

That prior to the bringing of this suit said two mortgagees had filed their petitions in the said circuit court of Iowa for Scott county, where said assignment proceedings are pending, asking that the amounts secured by said mortgages may be paid in full from the said trust fund so in the hands of the defendant Meyer as such assignee.

That the defendant Meyer as such assignee, together with certain

creditors of Ott, who have duly presented their claims under
30 said assignment, have filed in said court answers to said two petitions setting up that said two mortgages are void in law as against the creditors of said Ott, because of an intent to prefer said mortgagees over the other creditors of said Ott, and because not recorded as required by law when made, and because said mortgagor was by the terms of said mortgages allowed to retain possession of said mortgaged property and sell and dispose of the same the same as if no such mortgages had been made; and to use and dispose of the proceeds of said sales; that said proceedings are still pending in said circuit court of Iowa and are undetermined.

And this defendant Meyer avers that if said two mortgages shall or if either of them shall be held and decreed to be fraudulent in law or in equity as to the creditors of said Ott, then that said property so sought by said Ott to be conveyed by said mortgages was by said deed of assignment legally and lawfully conveyed, transferred, and delivered to defendant Meyer in trust for the benefit of all the creditors of said Ott before said complainant obtained or required any lien thereon or claim thereto by virtue of its said attachments or otherwise, and that said defendant Meyer as such assignee received and has a good and valid title to said property, and is taking all proper and legal means to defeat the pretended lien of said mortgagees, and that when said mortgages shall be decreed to be void and no lien on said property or fund, then said Meyer as such assignee is entitled to distribute the same among the creditors of said Ott who have presented their claims under said assign-
31 ment, as is provided by said chapter 7, title 14, of the Code of Iowa.

That said complainant has never presented its said claim or any claim against said Ott or as a creditor of said Ott under said assignment, and it is not therefore entitled to be heard in respect to the disposition of the said fund or any part of it so held by said Meyer as assignee of said Ott.

These defendants deny that after said Ott had determined to make said assignment he paid any of his creditors in full or secured them with intent to give them or any of them a preference over his other creditors.

That said Ott did, just before making said assignment, pay off the amounts due his employees in and about his said business in full, but that by the laws of Iowa such employees were entitled to be paid in full by this assignee before anything could be paid to the other creditors of said Ott.

These defendants deny that the said assignment and chattel mortgages were or that any one of them was made or contrived by said Ott as a part and parcel of an unlawful and fraudulent scheme to hinder, delay, or defraud certain of the creditors of said Ott, or especially of said plaintiffs, and deny that said Ott, by having said chattel mortgages withheld from the records until he was about to make said assignment (if such is the fact), attempted to perpetrate a fraud or to defeat the laws of the State of Iowa concerning such

assignments for the benefit of creditors, and deny that he,
32 the defendant Meyer, ever had any knowledge of any such fraudulent intention, or is or ever was in any way a party thereto.

Defendants deny that said assignee is wrongfully seeking to hold any property in his hands as such assignee from the plaintiff or any other creditor of said Ott.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) CHARLES F. MEYER,
CHARLES F. MEYER,
Assignee of George Ott under General Assignment for Benefit of Creditors.

GEORGE OTT,
By BILLS & BLOCK,
Their Solicitors.

JOHN C. BILLS, *Of Counsel.*

STATE OF IOWA, }
Scott County, } *ss:*

33 Charles F. Meyer, being first duly sworn, upon his oath says that he is a defendant in the above-entitled suit and is the assignee of said George Ott under a general assignment for the benefit of creditors; that he has heard the foregoing answer read and knows the contents thereof, and that the matters and things therein stated are true to his own knowledge except as to those matters therein stated upon the information, and he believes them to be true.

(Signed) CHARLES F. MEYER.

Subscribed and sworn to by the said Charles F. Meyer before me this 4th day of December, 1886.

(Signed) CARL F. HASS,
[SEAL.] *Notary Public in Scott County, Iowa.*

Copy of Deed of Assignment.

This indenture, made the 27th day of April, 1886, between George Ott, of Davenport, Iowa, of the first part, and Charles F. Meyer, of the same place, of the second part, witnesseth:

Whereas said George Ott is justly indebted to many persons in

sundry amounts and has become unable to pay and discharge with punctuality or in full, and being desirous of making a fair and equitable distribution of his property and effects among his creditors:

Now, therefore, this indenture witnesseth that the said George Ott, in consideration of the premises and of the sum of one dollar to him in hand paid by the party of the second part, has granted,
34 bargained, sold, released, assigned, conveyed, transferred, and set over, and by these presents does grant, bargain, sell, release, assign, convey, transfer, and set over, unto said Charles F. Meyer all and singular the lands, tenements, hereditaments, fixtures, machinery, and all the goods, chattels, and merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, and property of every name and nature whatsoever of him, the said George Ott, wherever the same may be situated, except such property as is by law exempt from the payment of his debts; to have and to hold the same and every part and parcel thereof, with the appurtenances, to the said party of the second part, in trust, however, to and for the following uses, intents, and purposes—that is to say: The said party of the second part is to receive said property herein assigned, and is to sell and convert the same into money and distribute the same among the creditors of said George Ott under the provisions of chapter seven (7), title fourteen (14), of the Code of Iowa.

Said property herein assigned, so far as I can now call the same to mind, is contained in Schedule "A," hereto attached.

And my said creditors and the amounts of their respective demands are contained in Schedule "B," hereto attached, so far as I can now call the same to mind.

In witness whereof said George Ott has hereunto set his hand this 27th day of April, 1886.

(Signed) GEORGE OTT.

35 STATE OF IOWA, } ss:
Scott County, }

On this 27th day of April, 1886, before me, the undersigned, a notary public in and for said county, personally came George Ott, to me personally known to be the identical person whose name is affixed to the foregoing deed of assignment as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal the date last above written.

(Signed) JOHN C. BILLS,
[SEAL.] *Notary Public in and for Scott Co., Ia.*

STATE OF IOWA, }
Scott County. }

Filed for record the 27th day of April, A. D. 1886, at 8.57 o'clock a. m., and recorded in Bock No. 3 of Chattels, page 147.

H. VOLLEUR, *Recorder,*
W. PULS, *Deputy.*

Endorsed: Filed Dec. 6, 1886. H. K. Love, clerk U. S. C. C.

Thereupon, on the same day, to wit, December 6th, A. D. 1886, and being at same rule day, another answer was filed in this case, which also reads in words and figures as follows, to wit:

In the Circuit Court of the United States for the Southern District of Iowa, Eastern Div.

36 SOUTH BRANCH LUMBER CO., Complainant,
vs.
GEORGE OTT, CHARLES F. MEYER; CHARLES F. MEYER, Assignee of George Ott under General Assignment for Benefit of Creditors; Charles Hill, Addie Kloppenberg, and Charles Beiderbecke, Guardian of Addie Kloppenberg, a Minor. } In Equity.

The answer of Charles Hill to the bill of complaint of South Branch Lumber Company, plaintiff.

This defendant, respectfully, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, says—

That he is the person named in complainant's said bill to whom, as mortgagee, said George Ott made and delivered the certain chattel mortgage referred to in said bill.

That for many years prior to the 27th day of April, 1886, said George Ott was engaged at Davenport, Scott county, Iowa, in
37 the business of buying and selling and manufacturing sash, doors, blinds, &c., and had for many years resided at said place.

That on or about said 27th day of April, 1886, said George Ott, claiming to be unable to pay all his debts promptly or in full, did make, execute, and deliver in writing to the defendant, Charles F. Meyer, as assignee, a general assignment of all his, said Ott's, property, of every kind or nature, in trust for the benefit of all the creditors of said Ott, to be divided among them *pro rata* under the provisions of chapter seven (7), title fourteen (14), of the Code of Iowa, as by reference to a copy of said assignment attached hereto and made by reference a part of this his answer will fully and at large appear.

That said written assignment contained an inventory of all the property of said Ott and a list of his creditors, with the amount due each, and was duly acknowledged before a notary public so as to entitle the same to be recorded, and said written assignment, having been so made, acknowledged, and delivered to the said Charles F. Meyer, assignee, on said 27th day of April, 1886, was, on said 27th day of April, 1886, duly filed for record with the recorder of deeds of said Scott county and was by him duly recorded in his said office.

That on said 27th day of April, 1886, and as soon as said deed of assignment was by said Ott delivered to said Meyer, he, the said Meyer, accepted the said trust and at once took possession of all the property of every kind of said Ott, except what was and is exempt from the payment of debts by the laws of Iowa, and at
38 once proceeded to carry out and execute said trust as is provided by the statutes of the State of Iowa, and that said defendant, Meyer, ever since that time has had and now has said property in the execution of said trusts under the provisions of said chapter seven of title fourteen of the Code of Iowa.

That thereafter and on the 14th day of May, 1886, said defendant, Meyer, as such assignee, did file with the clerk of the circuit court of said Scott county, Iowa, where said assignment was recorded, a true and full inventory and valuation of all the property of said estate of said George Ott, under oath, so far as the same came to his knowledge, and then and there entered into bonds to said clerk for the use of the creditors of said Ott in double the amount of the said inventory and valuation of said property, with good and sufficient sureties approved by said clerk of said court, for the faithful performance of said trust, and that said Meyer, as such assignee, did forthwith and on said 27th day of April, 1886, give notice of said assignment by publishing a notice of the same in a newspaper in said Scott county for six weeks, and did at the same time send a printed copy of said notice by mail to each creditor of said Ott, directed to such creditor at his usual place of residence, according to the provisions and requirements of section 2119 of the Code of Iowa.

And that at the expiration of three months from the time of first publishing said notice said Meyer, as such assignee, did file his report in writing in said circuit court of Iowa, giving a true
39 and full list under oath of all such creditors of said Ott as claimed to be such, with a statement of their claims, and also an affidavit of the publication of said notice of said assignment, and a list of said creditors and their places of residence to whom said notice had been sent by mail, and the dates of mailing, all duly verified, as is required by section 2120 of the Code of Iowa.

That within the said three months from the time of first publishing said notice of assignment creditors of said Ott to the number of one hundred or more presented their claims under oath, as is provided in said statute, to said assignee and in said circuit court of Iowa, asking to share in the proceeds of the property so assigned, and said claims amount in the aggregate to more than the sum of one hundred thousand dollars.

That said Meyer, as such assignee, has proceeded to execute said trusts as is provided by law and the practice of said circuit court of Iowa, and has converted most of the available property of said Ott so assigned to him into money, including said property so mortgaged to this defendant, and holds the same as such assignee, subject to the order, jurisdiction, and judgment of said circuit court of Iowa.

That said matter of said assignment was, when said inventory and valuation were filed in said court, duly docketed in and by

said court as case No. 5330 on the docket of said court, as is provided in and by said chapter 7, title 14, of the Code of Iowa.

40 That under said law said assignee was and is compelled to make a dividend of the money in his hands as such assignee among said creditors at the expiration of six months from the time of making said assignment, and that said six months expired on the 27th day of October, 1866.

That on the 4th day of October, 1886, said Meyer, as such assignee, obtained from said circuit court of Iowa an *ex parte* order excusing him from making any such dividend until all litigation seeking to hold him personally responsible to any creditor of said Ott for such funds so in his hands as such assignee should be finally disposed of and determined.

That on the 18th day of November, 1886, several of the said creditors of the said Ott, who had presented their said claims within the three months from the giving of said notice of assignment, filed in said circuit court of Iowa a petition and motion in writing asking said court to set aside and revoke said order of October 4th, 1886, and that said assignee be ordered to at once make a *pro rata* dividend of all the funds in his hands as such assignee among the said creditors according to the said laws of the State of Iowa, and that said petition and motion are still pending in said court.

This defendant further avers that on or about the 20th day of July, 1886, and before the bringing of this suit or the filing of the bill of complaint in this suit, this defendant filed in said circuit court of Scott county, Iowa, where the matter of said assignment was and is pending, his petition under oath making said

41 George Ott, Charles F. Meyer, assignee, and others defendants, and setting out in full his said chattel mortgage, and claiming to recover from said trust fund so in the hands of said assignee the said sum so secured by said chattel mortgage, as will fully and at large appear by reference to a copy of said petition hereto attached and made a part hereof for reference; that said petition was duly docketed by said court as case No. 5366 on the docket of said court, and is now pending and undetermined in said court.

That said Meyer, as such assignee, and certain creditors of said Ott who have presented their claims under said assignment have filed in said suit answers controverting said petition of this defendant, as will more fully and at large appear by reference to a copy of said answer hereto attached and made a part hereof for reference.

And this defendant further avers that, in accordance with the provisions of the statutes and laws of the State of Iowa, full and complete jurisdiction of and over the matter of said assignment, and of and over said trust fund so held by said Meyer, as such assignee, and of and over the execution of said trusts, and of and over the said Meyer personally as such assignee and trustee, and of and over this defendant personally was and is vested in the said circuit court of the State of Iowa in and for Scott county, which court now has cognizance of and exclusive jurisdiction of the same and of all said matter relating to the claims of this defendant under said chattel

mortgage, with ample power, authority, and jurisdiction in
42 said court to control and enforce the execution of said trusts and decide upon the claims and rights of all parties claiming an interest in or lien upon said trust fund and right and justice fully to administer in the premises.

That under the laws of the State of Iowa said fund so in said assignee's possession as such assignee is a fund in said circuit court of Iowa, and said Meyer, as such assignee, holds the same as an officer of said circuit court of Iowa and subject to the orders and supervision of said court the same as if he so held said fund as a receiver of and appointed by said court.

And therefore this defendant avers that this honorable court has no jurisdiction to entertain the bill of complaint in this suit, which seeks to take said fund from the prior possession and jurisdiction of said circuit court of Iowa, and to dispose of the same in disregard of the orders and judgments of said court now having the possession and exclusive jurisdiction over the same.

This defendant further avers that the said attachment of said complainant referred to in the bill of complaint in this suit was sued out, issued, and levied by garnishing said Meyer, and this defendant, after said assignment was made, delivered, and recorded, and after said Meyer, as such assignee, had taken possession, under and in pursuance of the same, of all the property of said Ott, and that by the laws of the State of Iowa said complainant acquired no lien upon or interest whatever in said property so assigned by
reason of said pretended attachment and garnishment, and
43 had not and has not any such lien on or interest in said property or fund.

This defendant denies that he made any agreement with said Ott that he would not record said mortgage until he should have the consent of said Ott to do so, but he alleges the truth to be that for several years prior to the giving of said mortgage he had been an accommodation endorser for said Ott at the First National Bank of Davenport, Iowa, for the sum of $3,000.00; that some weeks before the said 20th of February, 1886, he requested said Ott, if he was to continue to endorse renewal notes to said amount, that he, said Ott, should in some way secure him by mortgage; that soon after the said 20th day of February, 1886, said Ott handed him said note and mortgage which he, said Ott, had made and executed to him on said 20th day of February, 1886, for the purpose of securing him against any loss as such endorser; that when said Ott handed him his said mortgage he requested him, this defendant, to not place said mortgage on record presently or at that time, and defendant told him he would not; that some days before the making the said assignment said Ott told this defendant that he was at liberty to record said mortgage if he wished to do so, and defendant did thereafter and on the 20th day of April, 1886, cause said mortgage to be recorded in the recorder's office of said Scott county.

That at the time when said mortgage was so recorded this defendant was endorser for said Ott upon three promissory notes at said bank, to wit: One note for $1,200, dated February 1st, 1886, due

90 days after date; one note for $900, dated February 12th,
44 1886, and due 90 days after date, and one for $900, dated April 10th, 1886, and due 90 days after date; that he paid the first-named note to said bank in full May 5th, 1886, and the second May 16th, 1886, and third July 12th, 1886—in all, the sum of $3,000.00—and that the said sums, with interest from the time of such payments, are still due and unpaid from said Ott.

Defendant denies that said mortgage could not have been recorded until said Ott gave his consent to the same, but alleges that he had the legal right and power to record the same at any time after he had received the same. He denies that the said Ott had determined to make an assignment for the benefit of his creditors when he made or when he delivered said mortgage to defendant, and that if said Ott had so determined at the time when he told defendant he was at liberty to record said mortgage it was wholly unknown to this defendant; and this defendant denies that said mortgage was made or delivered in contemplation of insolvency on the part of said Ott or when he intended to make such assignment, and denies that he, this defendant, was a party to or had any knowledge of any such fraudulent intent.

Defendant alleges that said mortgage was delivered to him a very short time after it was so made and long before said assignment and before said note of April 10th was so endorsed by this defendant.

Defendant denies that said mortgage was made by said Ott or received by this defendant with intent to give defendant a preference over the other creditors of said Ott, or that it was a part
45 of said general assignment, and denies that said general assignment was not made for the equal benefit of all the creditors of said Ott in proportion to their respective claims.

Denies that said mortgage is fraudulent or voidable as to complainant or any other of the creditors of said Ott, under the laws of the State of Iowa, because of the promise in the same that said Ott should retain possession of said mortgaged property and sell and dispose of the same or for any other reason or reasons.

That if said Ott was insolvent on said 20th day of February, 1886, or when said mortgage was delivered to defendant or when he, defendant, placed the same on record, such insolvency was wholly unknown to this defendant.

And in respect to the allegations in said bill of complaint contained, to the effect that between the 20th day of February, 1886, and the 20th day of April, 1886, said plaintiff sold and delivered to said Ott large quantities of merchandise, and that the same has not been paid for—

This defendant, upon information and belief, avers that there was an open and running account between said parties, and that between said dates said plaintiff did sell and deliver to said Ott lumber, &c., at the prices amounting in the aggregate to the sum of $8,977.16, and that between said dates said Ott paid said plaintiff on account of the sum of $12,172.38.

And defendant denies any allegation of said bill of complaint inconsistent with the above statements.

That as to the allegation in said bill of complaint that
46 plaintiff had no notice or knowledge of the said chattel mortgages prior to the time when they were filed for record, this defendant has no knowledge or information sufficient to enable him to form a belief. He therefore leaves plaintiff to make such proof thereof as he shall see fit; but defendant alleges that plaintiff did have notice of and knowledge of said two mortgages prior to the issuing and levying of his said writ of attachment.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) CHARLES HILL,
By ERNST CLAUSSEN,
His Solicitor.

ERNST CLAUSSEN, *Of Counsel.*

STATE OF IOWA, }
Scott County, } *ss:*

Charles Hill, being first duly sworn, upon his oath says that he is a defendant in the above-entitled suit; that he has heard the foregoing answer read and knows the contents thereof, and that
47 the matters and things therein stated are true to his own knowledge except as to those matters therein stated upon information, and he believes them to be true.

(Signed) CHAS. HILL.

Subscribed and sworn to by said Charles Hill before me this 2nd day of December, A. D. 1886.

(Signed) ERNST CLAUSSEN,
[SEAL.] *Notary Public, Scott County, Iowa.*

Endorsed: Filed Dec. 6, 1886. H. K. Love, clerk.

EXHIBIT.

This indenture, made the 27th day of April, 1886, between George Ott, of Davenport, Iowa, of the first part, and Charles F. Meyer, of the same place, of the second part, witnesseth:

Whereas said George Ott is justly indebted to many persons in sundry amounts, and has become unable to pay and discharge with punctuality or in full, and being desirous of making a fair and equitable distribution of his property and effects among his creditors:

Now, therefore, this indenture witnesseth that the said George Ott, in consideration of the premises and of the sum of one dollar to him in hand paid by the party of the second part, has granted, bargained, sold, released, assigned, conveyed, transferred, and set over, and by these presents does grant, bargain, sell, release, assign, convey, transfer, and set over, unto said Charles F. Meyer all and singular the lands, tenements, and hereditaments, fixtures,
48 machinery and all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, and property of every name and nature whatsoever of him, the said George Ott, wherever the same may be situated, except such property as is by law exempt from the payment of his debts; to have and to hold the same and every part and parcel thereof, with the appurtenances, to the said party of the second part, in trust, however, and to and for the following uses, intents, and purposes—that is to say, the said party of the second part is to receive said property herein assigned, and is to sell and convert the same into money and to distribute the same among the creditors of said George Ott, under the provisions of chapter seven (7), title fourteen (14), of the Code of Iowa.

Said property herein assigned, so far as I can now call the same to mind, is contained in Schedule A, hereto attached.

And my said creditors and the amounts of their respective demands are contained in Schedule B, hereto attached, so far as I can now call the same to mind.

In witness whereof George Ott has hereunto set his hand this 27th day of April, 1886.

(Signed) GEORGE OTT.

STATE OF IOWA, } ss:
Scott County, }

On this 27th day of April, 1886, before me, the undersigned,
49 a notary public in and for said county, came George Ott, to me personally known to be the identical person whose name is affixed to the foregoing deed of assignment as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal the date last above written.

(Signed) JOHN C. BILLS,
[SEAL.] *Notary Public in and for Scott County, Iowa.*

Know all men by these presents that I, George Ott, of the city of Davenport, of the county of Scott and State of Iowa, party of the first part, in consideration of the sum of one ($1.00) dollar to me in hand paid by Charles Hill, of the same county and State, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said party of the second part, his heirs, assigns, etc., the following goods and chattels, to wit:

All my stock of goods, wares, and merchandise, consisting of a general stock of glass, windows, doors, window frames, blinds, sash,

and whatsoever now kept in my brick building, No. 410 West Front street, and the entire stock of lumber and manufacturing material now on hand and kept upon the premises of my factory, in Davenport, Scott county, Iowa, as well as all goods, wares, and merchandise, lumber, and manufacturing materials that may hereafter be purchased by me during the existence of this mortgage to replenish the stock or stocks, reserving to myself the right to sell and manufacture respectively said stocks in the ordinary course of my business:

To have and to hold the same forever; and I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever, upon condition, however, that if the said party of the first part shall pay to the said party of the second part, his heirs, assigns, etc., his one promissory note, dated February 20th, 1886, and described as follows, to wit:

One for three thousand ($3,000) dollars, payable one day after date, with interest at the rate of seven (7) per cent. per annum, according to the tenor thereof, then these presents to be void; otherwise in full force.

And I, the said party of the first part, do hereby covenant and agree to and with the said party of the second part that in case of default made in the payment of the above-mentioned promissory note, or in case of my attempting to dispose of or remove from said county of Scott the aforesaid goods and chattels or any part thereof or whenever the said mortgagee shall choose so to do, then and in that case it shall be lawful for the mortgagee or his assigns, by himself or agent, to take immediate possession of said goods and chattels, wherever found, the possession of these presents being his sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due or to become due, as the case may be, with all reasonable costs and attorneys' fees pertaining to the taking, keeping, advertising, and selling of said property, the money remaining after paying said sums, if any, to be paid on demand to the said party of the first part.

Said sale to take place wherever the holder of this mortgage may elect in the county of Scott, in the State of Iowa, after giving at least ten days' notice thereof by posting up written notices in three public places in said county; and I hereby further authorize the person conducting said sale to adjourn the same, if deemed in his opinion necessary, from time to time until said property be sold, and to give a bill of sale to the purchaser thereof, which shall be conclusive as to the regularity of all the proceedings connected herewith, and convey absolutely all of my right and title therein. If from any cause said property shall (?) to satisfy said debt, interest, costs, and charges I agree, covenant, and *agree* to pay the deficiency.

Witness my hand this 20th day of February, 1886.

(Signed) GEORGE OTT.

STATE OF IOWA, } ss:
Scott County, }

Be it remembered that on the 20th day of February, 1886, before the undersigned, a notary public in and for said county, came George Ott, to me personally known to be the identical person whose name is affixed to the foregoing instrument as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

(Signed) BLEIK PETERS,
Notary Public, Scott Co., Ia.

52 (EXHIBIT.)

In the Circuit Court of the State of Iowa in and for the County of Scott. Sept. Term, 1886.

CHAS. HILL, Pl'ff,
vs.
GEO. OTT and CHAS. F. MEYER, Assignee of Geo. Ott under General Assignment for Benefit of Creditors. } Petition in Equity.

I.

The plaintiff, Charles Hill, respectfully represents that on or about the 20th day of February, 1886, the defendant, George Ott, executed and delivered his promissory note for three thousand dollars ($3,000.00) to the plaintiff, Charles Hill. The following is a true copy of said note, in words and figures following, to wit:

"One day after date I promise to pay three thousand — ($3,000.00), with interest thereon until paid at the rate of seven per cent. per annum from the time same becomes due, and a failure to pay any of said interest within ten days after due shall cause the whole of this note to thereupon become due and collectible at once. If this note is not paid within ten days after it becomes due I promise to pay all necessary and legal expenses incurred by the holder of this note in the presentation and protestation of the same, as well as a reasonable attorneys' fee for the collection of this note, by suit or otherwise.

"The drawers and endorsers and makers of this note sev-
53 eraliy waive presentment for payment, protest and notice of protest, and non-payment of this note.

"Secured by chattel m'tg'e.

"(Signed) GEORGE OTT."

[On margin:] Endorsement.

The within note is intended to stand as security to indemnify Charles Hill on account of endorsement of $3,000.00 in my favor.

II.

That in order to secure the payment of said note the said George Ott did execute and deliver to the plaintiff, Chas. Hill, on or about the said 20th day of February, 1886, his certain chattel mortgage on all his stock of goods, wares, and merchandise, consisting of a general stock of glass, glass windows, doors, window frames, blinds, sash, and whatsoever then kept in said George Ott's brick building, No. 410 West Front street, and also on the entire stock of lumber and manufacturing material then on hand and kept upon the premises of his factory, in Davenport, Iowa, as well as on all goods, wares, and merchandise, lumber, and manufacturing material that might hereafter be purchased by him during the existence of said mortgage to replenish his stock or stocks.

III.

That said mortgage was duly filed for record in the office of the recorder of Scott county, Iowa, on the 26th of April, 1886, and recorded in Book 2 of Chattels, on page 551.

IV.

That a copy of said mortgage, marked Exhibit "A," is hereto attached and made part hereof.

V.

54 That after the execution and delivery and the recording of said mortgage the said George Ott made a general assignment for the benefit of his creditors to the said defendant, Charles F. Meyer.

VI.

That the conditions of said mortgage have been broken, in this, that said note has not been paid when due and still remains unpaid.

VII.

That the plaintiff is still the owner of said note and mortgage, and that there is due thereon the sum of $3,000, with 7 per cent. interest from the 21st day of February, 1886.

VIII.

Wherefore the plaintiff claims the right to foreclose said mortgage in this court and asks that the said assignee, Charles F. Meyer, may be ordered to pay the said mortgage out of the assets of the said George Ott in his hands; that if he fails so to do a special execution may issue against the mortgaged property, and that the same, or so much thereof as may be necessary to satisfy said note and mortgage, *to* be sold, and that he may have such further and general relief not inconsistent with equity as this cause may require.

(Signed) CHARLES HILL.

STATE OF IOWA, } ss:
Scott County, }

I, Charles Hill, being duly sworn, do say upon oath that I am the plaintiff in the above-entitled cause; that I know the con-
55 tents of the foregoing petition, and that the statements thereof are true, as I verily believe.

(Signed) CHARLES HILL.

Sworn to and subscribed before me by the said Charles Hill the 20th day of July, A. D. 1886.

(Signed) ERNST CLAUSSEN,
[SEAL.] *Notary Public, Scott County, Iowa.*

EXHIBIT.

In the Circuit Court of the State of Iowa in and for the County of Scott.

CHAS. HILL
vs.
GEORGE OTT and CHAS. F. MEYER, Assignee, &c. } No. 5366, Equity.

Answer of Chas. F. Meyer, Assignee, &c.

Now comes Chas. F. Meyer, assignee of George Ott for benefit of his creditors, and, for answer of petition of plaintiff in the above-entitled cause, says—

That the personal property described in the said chattel mortgage attached to said petition came into his hands as assignee of said George Ott on or about the 27th day of April, 1886, and that soon thereafter and before the bringing of this suit this defendant was garnisheed in several actions brought by creditors of said George Ott against him by attachment, and said actions are still pending in the courts of the State of Iowa and of the United States in and for the southern district of Iowa, and, as this defendant is in-
56 formed and verily believes, said several creditors, the plaintiffs in said attachment suits, contest the validity of said mortgage of said plaintiff, —— ——, and seek to charge this defendant as garnishee for and on account of said property so described in plaintiff's said mortgage and so received by this defendant as such assignee.

Defendant therefore says that plaintiff ought not to have a decree or judgment in this suit against him so long as said attachment and garnishment proceedings are pending, as above stated.

(Signed) BILLS & BLOCK,
Attorneys for Meyer, Assignee.

STATE OF IOWA, } ss:
Scott County, }

I, Charles F. Meyer, being duly sworn, say that I am the defendant named in the foregoing answer; that I have heard said answer read and know the contents thereof, and that the same is true, as I verily believe.

(Signed) CHARLES F. MEYER.

Subscribed and sworn to by said Charles F. Meyer before me this 14th day of September, 1886.

(Signed) CARL F. HASS,
[SEAL.] *Notary Public.*

57 EXHIBIT.

In the Circuit Court of the State of Iowa in and for Scott County.

CHARLES HILL
vs.
GEORGE OTT and CHAS. F. MEYER, Assignee of George Ott. } No. 5366.

Amendment to Answer.

Now comes Chas. F. Meyer, assignee of George Ott, the Meadville Glass Co., Limited, and Harsch, Ely & Co., creditors of said Ott, and, by leave of court first had, amends his answer in the above cause as follows:

Said defendant alleges that the said mortgage set up in the petition in this cause was made and executed by said Ott to said plaintiff for the purpose and with the intent to delay, hinder, and defraud the creditors of said Ott, and was received by said plaintiff for like purpose and with like intent, and that said mortgage is therefore void and of no effect as against the creditors of said Ott, who have presented their claims under said assignment, and said mortgage was not recorded as is provided by law, and said mortgagor was allowed by the terms of said mortgage to sell and dispose of said mortgaged property the same as if no such mortgage had been made, and to use and dispose of the proceeds of such sale.

(Signed) BILLS & BLOCK,
Attorneys for said Assignee.
FRED. HEINZ,
Att'y for said Creditors.

58 Also on the same rule day, to wit, December 6th, A. D. 1886, still another answer was filed in this cause, which is in words and figures following, to wit:

In the Circuit Court of the United States for the Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY, Complainant, *vs.* GEORGE OTT, CHARLES F. MEYER; CHARLES F. MEYER, Assignee of George Ott under Assignment for Benefit of Creditors; Charles Hill, Addie Kloppenberg, and Charles Beiderbecke, Guardian of Addie Kloppenberg, a Minor.	In Equity.

The answer of Addie Kloppenberg, an infant under age of 18 years, by Charles Beiderbecke, her guardian, to the bill of complaint of South Branch Lumber Company, plaintiff.

This defendant, respectfully, now and at all times hereafter saving to herself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for her to make — to, answering, says—

That for many years prior to the 27th day of April, 1886,
59 said George Ott was engaged at Davenport, Scott county, Iowa, in the business of buying and selling and manufacturing sash, doors, blinds, &c., and had for many years resided at said place.

That on or about said 27th day of April, 1886, said George Ott, claiming to be unable to pay all his debts promptly or in full, did make, execute, and deliver, in writing, to the defendant, Chas. F. Meyer, as assignee, a general assignment of all his, said Ott's, property, of every kind or nature, in trust for the benefit of all the creditors of said Ott, to be divided among them *pro rata*, under the provisions of chapter seven (7), title fourteen (14), of the Code of Iowa, as by reference to a copy of said assignment, attached hereto and made by reference a part of this answer, will fully and at large appear.

That said written assignment contained an inventory of all the property of the said Ott and a list of his creditors, with the amount due each, and was duly acknowledged before a notary public, so as to entitle the same to be recorded, and said written assignment, having been so made, acknowledged, and delivered to said Meyer, assignee, on said 27th day of April, 1886, was on said 27th day of April, 1886, duly filed for record with the recorder of deeds of said Scott county, and was by him duly recorded in his said office.

That on said 27th day of April, 1886, and as soon as said deed was by said Ott delivered to said Meyer, he, said Meyer, accepted said trust and at once took possession of all the property of every kind of said Ott, except what was and is exempt from the payment of debts by the laws of Iowa, and at once proceeded to carry
60 out and execute said trust as is provided by the statutes of the State of Iowa, and that said defendant Meyer ever since

that time has had and now has said property in the execution of said trust under the provisions of said chapter 7 of title 14 of the Code of Iowa.

That thereafter and on the 14th day of May, 1886, said defendant Meyer, as such assignee, did file with the clerk of the circuit court of said Scott county, Iowa, where said assignment was recorded, a true and full inventory and valuation of all the property of said estate of said Ott, under oath, so far as the same came to his knowledge, and then and there entered into bonds to said clerk for the use of creditors of said Ott in double the amount of the said inventory and valuation of said property, with good and sufficient sureties approved by said clerk of said court for the faithful performance of said trust, and that said Meyer, as such assignee, did forthwith and on said 27th day of April, 1886, give notice of said assignment by publishing a notice of the same in a newspaper in said Scott county for six weeks, and did at the same time send a printed copy of said notice by mail to each creditor of said Ott, directed to such creditor at his usual place of residence, according to the provisions and requirements of section 2119 of the Code of Iowa.

And that at the expiration of three months from the time of first publishing said notice said Meyer, as such assignee, did file his report in writing in said circuit court of Iowa, giving a true and full list, under oath, of all such creditors of said Ott—as claimed
61 to be such—with a statement of their claims, and also an affidavit of the publication of said notice of said assignment and a list of said creditors and their places of residence to whom said notice had been sent by mail and the dates of mailing, all duly verified, as is required by sec. 2120 of the Code of Iowa.

That within the said three months from the time of first publishing said notice of assignment creditors of said Ott to the number of one hundred or more presented their claims under oath, as is provided in said statute, to said assignee and in said circuit court of Iowa, asking to share in the proceeds of the property so assigned, and said claims amount in the aggregate to more than the sum of one hundred thousand dollars.

That said Meyer, as such assignee, has proceeded to execute said trust as is provided by law and the practice of said circuit court of Iowa, and has converted most of the available property of said Ott so assigned to him, including said property so mortgaged to this defendant, into money, and holds the same as such assignee subject to the order, jurisdiction, and judgment of said circuit court of Iowa.

That said matter of said assignment was, when said inventory and valuation were filed in said court, duly docketed in and by said court as case No. 5330 on the docket of said court, and the same is now pending in said court, as is provided in and by said chapter 7, title 14, of the Code of Iowa.

62 That under said law said assignee was and is compelled to make a dividend of the money in his hands as such assignee among such creditors at the expiration of six months from the time

of making said assignment, and that said six months expired on the 27th day of October, 1886.

That on the 4th day of October, 1886, said Meyer, as such assignee, obtained from said circuit court of Iowa an *ex parte* order excusing him from making any such dividend until all litigation seeking to hold him personally responsible to any creditor of said Ott for such funds so in his hands as such assignee should be finally disposed of and determined.

That on the 18th day of November, 1886, several of the said creditors of said Ott, who have presented their claims within the three months of the giving of the said notice of assignment, filed in said circuit court of Iowa a petition and motion in writing asking said court to set aside and revoke said order of October 4th, 1886, and that said assignee be ordered to at once make a *pro rata* dividend of all the funds in his hands as such assignee among the said creditors according to the said laws of Iowa, and that said petition and motion are still pending — said court.

This defendant further avers that on or about the 22nd day of June, 1886, and before the bringing of this suit or the filing of the bill of complaint in this suit this defendant filed in said circuit court of Scott county, Iowa, where the matter of said assignment was and is pending, her petition under oath making said George Ott, Charles F. Meyer, assignee, &c., and others defendants,
63 and setting out in full her said chattel mortgage and claiming to recover from said trust fund so in the hands of said assignee the said sum so secured by said chattel mortgage, as will fully and at large appear by reference to a copy of said petition hereto attached and made a part hereof for reference; that said petition was duly docketed by said court as cause No. 5348 on the docket of said court, and is now pending and undetermined in said court.

That said Meyer as such assignee and certain creditors of said Ott, who have duly presented their claims under said assignment, have filed in said suit answer controverting said petition of this defendant, as will more fully and at large appear by reference to a copy of said answer hereto attached and made a part hereof for reference.

And this defendant further avers that in accordance with the provisions of the statutes and laws of the State of Iowa full and complete jurisdiction of and over the matter of said assignment, and of and over said trust fund so held by said Meyer as such assignee, and of and over the execution of said trusts, and of and over the said Myer personally as such assignee and trustee, and of and over this defendant personally, was and is vested in the said circuit court of Iowa in and for said Scott county, which court now has cognizance of and exclusive jurisdiction of the same and of all said matters relating to the claims of this defendant under said chattel mortgage, with ample power, authority, and jurisdiction in said court to control and enforce the execution of said trust and
64 decide upon the claims and rights of all parties claiming an

interest in or lien upon said trust fund and right and justice to administer in the premises.

That under the laws of the State of Iowa said fund so in said assignee's possession as such assignee is a fund in said circuit court of Iowa and said Meyer as such assignee holds the same as an officer of said circuit court of Iowa and subject to the orders and surpervision of said court the same as if he so held said fund as a receiver of and appointed by said court.

And therefore this defendant avers that this honorable court has no jurisdiction to entertain the bill of complaint in this suit, which seeks to take such fund from the prior possession and jurisdiction of said circuit court of Iowa and to dispose of the same in disregard of the orders and judgment of said court now having the possession of and exclusive jurisdiction over the same.

This defendant further avers that the said attachment of complainant referred to in the bill of complaint in this suit was sued out, issued, and levied by garnishing said Meyer and this defendant after said assignment was made, delivered, and recorded and after said Meyer as such assignee had taken possession under and in pursuance of the same of all the property of the said Ott, and that by the laws of the State of Iowa said complainant required no lien upon or interest whatever in said property so assigned by reason of said pretended attachment and garnishment, and had not and has not any such lien on or interest in said property or fund.

65 That prior to said 20th day of February, 1886, said Ott, as guardian of the defendant, Addie Kloppenberg, had in his possession as such guardian money of the said Addie, a minor, to the amount of $3,500.00 or more, and that it was the duty of said Ott under the laws of Iowa and the practice and orders of the probate court of Scott county aforesaid, which court had jurisdiction and cognizance of the matter of the guardianship of said minor, to invest said money in some way secured by mortgage; that instead of doing so he, said Ott, without any permission or order of said probate court so to do, put said $3,500.00 into his said manufacturing business; that about the said 20th day of February, 1886, it became necessary for said Ott to make his report to said probate court as such guardian as to how he had invested said $3,500.00, and in order to comply with the law and the order of the said probate court he, said Ott, made and executed said mortgage of date February 20th, 1886, to said minor; that said mortgage was made and acknowledged on said 20th day of February, 1886, and was recorded on the 26th of April, 1886.

This defendant denies that in contemplation of law said mortgage was not delivered to her until April 26, 1886, and denies that it was not delivered to her until after said Ott had fully and definitely determined to execute an assignment for the benefit of his creditors.

Denies that the delivery of said mortgage was a preference of this defendant over the other creditors of said Ott, or that it was a
66 part of his, said Ott's, general assignment for the benefit of his creditors, or that such assignment was not made for the benefit of all said Ott's creditors in proportion to their respective claims.

Denies that said mortgage was or is fraudulent or voidable as to complainant or any other of the creditors of the said Ott under the laws of Iowa because said Ott was allowed to retain possession of the said mortgaged property and to sell the same in the ordinary course of business, or because the said mortgage was withheld from record.

And, in respect to the allegations of said bill of complaint contained to the effect that between the 20th day of February, 1886, and the 26th day of April, 1886, said plaintiff sold and delivered to said Ott large quantities of merchandise, and that the same has not been paid for, this defendant, upon information and belief, avers that there was an open and running account between said parties, and that between said dates said plaintiff did sell and deliver to said Ott lumber, &c., at the prices amounting in the aggregate to the sum of $8,917.16, and that between said dates said Ott paid said plaintiff on account the sum of $12,172.38.

And defendant denies every allegation of said bill of complainant inconsistent with the above statement.

That, as to the allegation in said bill of complaint that plaintiff had no notice or knowledge of the said chattel mortgage prior to the time when they were filed for record, this defendant has no knowledge or information sufficient to enable *him* to form a belief.

67 *He* therefore leaves plaintiff to make such proof thereof as it shall see fit, but defendant alleges that plaintiff did have notice of and knowledge of said two mortgages prior to the issuing of and levying of its said writ of attachment.

Denies that said Ott when he executed said mortgage intended to make a general assignment for the benefit of his creditors, or that he executed the same with intent to prefer her as one of his creditors.

Defendant further avers that said $3,500.00 so belonging to her is still invested in said property of said Ott, and that said assignee, Meyer, has converted said property so mortgaged to her into money and now holds the same, and no part of said debt has ever been paid to her, and that the said Ott has no property whatsoever from which the same can be made, and his bond as such guardian is now worthless and nothing whatever can be collected from the sureties on the same.

That she has a legal and equitable right as against said complainant and as against all the creditors of said Ott to follow said trust fund of $3,500.00 so invested in said property of said Ott into the hands of said assignee and to recover the same from him.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith she is by the said bill charged, without this, that there is any other matter, cause, or thing in said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not hereby

68 well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable

court shall direct, and prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) ADDIE KLOPPENBERG,
By CHARLES BEIDERBECKE,
Her Guardian.

BLEIK PETERS AND
ERNST CLAUSSEN,
Defendant's Solicitors.

ERNST CLAUSSEN, *of Counsel.*

STATE OF IOWA, } ss:
Scott County, }

Charles Beiderbecke, being duly sworn, upon his oath says that he is the duly appointed guardian of the property of the said defendant, Addie Kloppenberg, and is acting as such; that he has heard the foregoing answer read and knows the contents thereof, and that the matters and things therein stated are true to his own knowledge except as to those matters therein stated upon information, and he believes them to be true.

(Signed) CHAS. BEIDERBECKE.

Subscribed and sworn to by the said Chas. Beiderbecke before me this 3rd day of December, 1886.

(Signed) BLEIK PETERS,
[SEAL.] *Notary Public, Scott County, Iowa.*

69 This indenture, made the 27th day of April, 1886, between George Ott, of Davenport, Iowa, of the first part, and Charles F. Meyer, of the same place, of the second part, witnesseth:

Whereas said George Ott is justly indebted to many persons in sundry amounts and has become unable to pay and discharge with punctuality or in full, and being desirous of making a fair and equitable distribution of his property and effects among his creditors: Now, therefore, this indenture witnesseth:

That the said George Ott, in consideration of the premises and of the sum of one dollar in hand to him paid by the party of the second part, has granted, bargained, sold, released, assigned, conveyed, transferred, and set over, and by these presents does grant, bargain, sell, release, assign, convey, transfer, and set over, unto said Charles F. Meyer all and singular the lands, tenements, and hereditaments, fixtures, machinery, and all the goods, chattels, merchandise, bills, goods, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, and property of every name and nature whatsoever, of him, the said George Ott, wherever the same may be situated, except such property as is by law exempt from the payment of his debts; to have and to hold the same and every part and parcel thereof, with the appurtenances, to the said party of the second part, in trust, however, and to and for the following uses, intents, and purposes—that is to say, the said

party of the second part is to receive said property herein assigned, and is to sell and convert the same into money and dis-
70 tribute the same among the creditors of said George Ott, under the provisions of chapter seven (7), title fourteen (14), of the Code of Iowa.

Said property herein assigned, so far as I can now call the same to mind, *or* contained in Schedule A, hereto attached.

And my said creditors and the amounts of their respective demands are contained in Schedule B, hereto attached, so far — I can now call the same to mind.

In witness whereof said George Ott has hereunto set his hand this 27th day of April, 1886.

(Signed) GEORGE OTT.

STATE OF IOWA, } *ss*:
Scott County, }

On this 27th day of April, 1886, before me, the undersigned, a notary public in and for said county, personally came George Ott, personally known to be the identical person whose name is affixed to the foregoing deed of assignment as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal the date last above written.

[SEAL.] (Signed) JOHN C. BILLS,
Notary Public in and for Scott County, Iowa.

In the Circuit Court of the State of Iowa in and for Scott County.

ADDIE KLOPPENBERG, Plaintiff,
vs.
CHARLES F. MEYER, Assignee, Defendant. } September Term, 1886.

Petition in Equity.

71 The plaintiff, by Charles Beiderbecke, her guardian, states:

I. That she, the said Addie Kloppenberg, is a minor, and that Charles Beiderbecke was appointed by this court the guardian of her property on the 22nd day of May, A. D. 1886.

II. That on the 22nd day of June, A. D. 1886, the said guardian filed his inventory of the estate of said minor.

III. That among the assets of the said estate is the following note, to wit:

$3,500.00. DAVENPORT, IOWA, *February 20th*, 1886.

One day after date I promise to pay Addie Kloppenberg or order thirty-five hundred ($3,500.00) dollars, with interest thereon until paid, at the rate of seven per cent. per annum after March 1st, 1885, payable annually, for value received, principal and interest payable at my place of business, in Davenport, Iowa. Should any of said interest not be paid when due it shall bear interest at the rate of seven per cent. per annum from the time same becomes due,

and a failure to pay any of said interest within ten days after due shall cause the whole of this note to thereupon become due and collectible at once. If this note is not paid within ten days after it becomes due I promise to pay all necessary and legal expenses incurred by the holder of this note in the presentation and protesting of the same, as well as a reasonable attorney's fee for the collection of this note by suit or otherwise. The drawers and endorsers and makers of this note severally waive presentment for payment,
72 protest, and notice of protest and non-payment of this note, secured by chattel mortgage.

(Signed) GEORGE OTT.

And to secure the payment of said note the said George Ott made and delivered to plaintiff a chattel mortgage, a copy of which is hereto annexed, marked "Exhibit A," and made part of this petition.

IV. That said chattel mortgage was duly filed for record in the office of the recorder of deeds for Scott county, Iowa, on the 26th day of April, A. D. 1886, at 5 o'clock p. m., and duly recorded in Book 2 of Chattels, page 550.

V. That on said note and mortgage there is now due and unpaid the sum of three thousand six hundred and sixty-four (3,664) $\frac{16}{100}$ dollars, with seven (7) per cent. per annum interest from March 1st, 1886.

VI. That the indebtedness evidenced by the note and mortgaged aforespecified contains the several sums of money collected by said George Ott as guardian of said minor, Addie Kloppenberg, for her use and benefit, but which said George Ott used and invested in his own business and had mixed with his own funds, as appears from the several reports filed by George Ott as guardian of the said minor, Addie Kloppenberg, now filed in the office of the clerk of this court, which are hereby specially referred to.

VII. That the said George Ott, on the 27th day of April, 1886, made a general assignment of all his property for the benefit of all his creditors to the said defendant, Charles F. Meyer, assignee,
73 and that the funds and monies collected by the said George Ott as guardian for said Addie Kloppenberg are now in the hands of said assignee, Charles F. Meyer.

VIII. That the plaintiff has demanded the payment of this fund of $3,664.16, with seven per cent. interest from March 1st, 1886, from said assignee, Charles F. Meyer, but that he has refused to pay or deliver the same.

Your petitioner therefore asks that this court grant an order requiring the assignee, Charles F. Meyer, to pay the amount of $3,664.16, with seven per cent. interest from March 1st, 1886, and costs and reasonable attorneys' fees, out of the funds now in his hands, before any other creditors are paid out of said — and in preference to them, and for such other and different relief as may be consistent with equity.

(Signed) ADDIE KLOPPENBERG,
By CHARLES BEIDERBECKE, *Guardian*,
By BLEIK PETERS, *Attorney*.

THE STATE OF IOWA, } ss:
Scott County, }

I, Charles Beiderbecke, say on oath that I am the guardian of Addie Kloppenberg, the plaintiff herein named; that I have read the foregoing petition and know the contents thereof, and that the matters set forth therein stated are true as I verily believe.

(Signed) CHARLES BEIDERBECKE.

Subscribed in my presence and sworn to before me by Chas. Beiderbecke the 22nd day of June, 1886.

(Signed) BLEIK PETERS,
[SEAL.] *Notary Public, Scott Co., Iowa.*

74 Know all men by these presents that I, George Ott, of the city of Davenport, of the county of Scott, and State of Iowa, in consideration of the sum of three thousand and five hundred (3,500) dollars to me in hand paid by Addie Kloppenberg, of same place, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said party of the second part, his heirs, assigns, etc., the following goods and chattels, to wit:

All my stock of goods, wares, and merchandise, consisting of a general stock of glass, glass windows, doors, window-frames, blinds, sashes, and whatsoever now kept in my brick building No. 410 West Front street, and the entire stock of lumber and manufacturing material now on hand and kept upon the premises of my factory, in Davenport, Scott county, Iowa, as well as all goods, wares, and merchandise, lumber and manufacturing material that may hereafter be purchased by me during the existence of this mortgage to replenish the stock or stocks, reserving to myself the right to sell and manufacture, respectively, said stock in the ordinary course of my business:

To have and to hold the same; and I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever, upon condition, however, that if the said George Ott shall pay to the said Addie Kloppenberg, *his* heirs, assigns, etc., his one promissory note, dated February 20th, 1886, and described as follows, to wit, one for thirty-five hundred (3,500) dollars, payable one day after date, with interest at the rate of seven per
75 cent. per annum, according to the tenor thereof, then these presents to be void; otherwise in full force; and I, the said George Ott, do hereby covenant and agree to and with the said Addie Kloppenberg that in case of default made in the payment of the above-mentioned promissory note, or in case of my attempting to dispose of or remove from the said county of Scott the aforesaid goods and chattels or any part thereof, or whenever the said mortgagee shall choose so to do, then and in that case it shall be lawful for the said mortgagee or his assigns, by himself or agent, to take immediate possession of said goods and chattels, wherever found, the possession of these presents being his sufficient authority there-

for, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount so due or to become due, as the case may be, with all reasonable costs pertaining to the taking, keeping, advertising, and selling of said property; the money remaining after paying said sums, if any, to be paid on demand to the said party of the first part; said sale to take place where elected by mortgagee, in the county of Scott, State of Iowa, after giving at least ten days' notice thereof by posting up written notices in three public places in said county; and I hereby further authorize the person conducting said sale to adjourn the same, if deemed in his opinion necessary, from time to time until said property be sold, and to give a bill of sale to the purchaser thereof, which will be conclusive as to the regularity of all proceedings connected herewith and convey absolutely all my right and title therein. If
76 from any cause said property shall fail to satisfy said debt, interest, costs, charges, I covenant and agree to pay the deficiency.

Witness my hand and seal this 20th day of February, 1886.

(Signed) GEORGE OTT.

STATE OF IOWA, } ss:
Scott County, }

Be it remembered that on the 20th day of February, 1886, before the undersigned, Bleik Peters, notary public in and for said county, personally came George Ott, to me known to be the identical person whose name is affixed to the foregoing instrument as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal day and year last above written.

(Signed) BLEIK PETERS,
[SEAL.] *Notary Public, Scott County, Iowa.*

In the Circuit Court of the State of Iowa in and for Scott County.

ADDIE KLOPPENBERG } In Equity. No. 5348.
vs.
CHARLES F. MEYER. }

Answer.

Now comes Charles F. Meyer, assignee of George Ott for benefit of his creditors, and for answer to the petition of plaintiff in the above-entitled cause says—

77 That the personal property described in the said chattel mortgage attached to said petition came into his hands as assignee of said George Ott on or about the 27th day of April, 1886, and that soon thereafter and before the bringing of this suit this defendant was garnisheed in several actions brought by creditors of said George Ott against him by attachment, and said actions are still pending in the courts of the State of Iowa and of the United

States in and for the southern district of Iowa, and as this defendant is informed and verily believes said several creditors, the plaintiffs in said attachment suits, contest the validity of said mortgage of said plaintiff as against them, and seek to charge this defendant as garnishee for and on account of said property so described in plaintiff's said mortgage and so received by this defendant as such assignee—

Defendant therefore says that plaintiff ought not to have a decree or judgment in this suit against him so long as said attachment and garnishment proceedings are pending, as above stated.

(Signed) BILLS & BLOCK,
Att'ys for Def't.

STATE OF IOWA, } ss:
Scott County, }

I, Charles F. Meyer, being duly sworn, say that I am the defendant named in the foregoing answer; that I have heard said answer read and know the contents thereof, and that the same is true as I verily believe.

(Signed) CHARLES F. MEYER.

Subscribed and sworn to by said Chas. F. Meyer before me
78 this 14th day of September, 1886.

(Signed) CARL F. HASS,
[SEAL.] *Notary Public.*

In the Circuit Court of the State of Iowa, Scott County.

ADDIE KLOPPENBERG
vs. } No. 5348.
CHARLES F. MEYER, Assignee of George Ott.

Amendment to Answer.

Now comes Charles F. Meyer, assignee, The Meadville Glass Co., Hersch, Ely & Co., creditors of said George Ott, and, by leave of court first had, amends his answer in the above cause as follows:

Said defendant alleges that the said mortgage set up in the petition in this cause was made and executed by said Ott to said plaintiff for the purpose and with the intent to delay, hinder, and defraud the creditors of the said Ott, and was received by the parties acting for said plaintiff for like purpose and with like intent, and that said mortgage is therefore void and of no effect as against the creditors of said Ott who have filed and presented their claims under said assignment, and said mortgage was not recorded as is provided by law, and said mortgagee was allowed by the terms of said mortgage to sell and dispose of said mortgaged property the same as if no such mortgage had been made and to use and dispose of the proceeds of such sale.

(Signed) BILLS & BLOCK,
Att'ys for said Assignee.

FRED. HEINZ,
Att'y for said Creditors.

79 Afterwards, to wit, on the 8th day of August, A. D. 1887, being at the June term of the court and on the 41st day of the term, a stipulation as to substitution of parties defendant was filed herein, reading as follows, to wit:

In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division.

THE SOUTH BRANCH LUMBER COMPANY
vs.
GEORGE OTT *et al.*

Stipulation as to Substitution of Parties Defendant.

Whereas Charles F. Meyer, who was the assignee of George Ott under general assignment for the benefit of creditors, departed this life on the 14th day of March, 1887; and

Whereas J. B. Meyer, of Davenport, Iowa, has been appointed and has qualified as assignee of the said George Ott in the place of the said Charles F. Meyer, deceased; and

Whereas it is desired by all the parties that this action and the taking of evidence therein may proceed with as little delay as possible:

Now, it is agreed between the parties that the said J. B. Meyer may be substituted as a defendant in the said action as assignee of the said George Ott in the place of the said Charles F. Meyer, assignee, and that the said action shall proceed in all respects the same as if the said Charles F. Meyer, assignee, had survived and the proceedings were conducted against him as one of the defendants.

80 It is further stipulated that whereas the said Charles F. Meyer was individually party defendant to said action, and a document purporting to be his last will and testament has been filed in the district court of Iowa for Scott county and will be presented for probate at the May term, 1887, of said court, now, whenever the said court shall appoint an executor or administrator of the estate of said Meyer, then said executor or administrator shall be substituted as a defendant, and the parties will thereafter execute a stipulation that all the evidence which in the meantime may have been taken in this case shall be considered the same as if taken after the appointment of such executor or administrator and after he should have been formally made a party defendant to this action.

Dated this 24th day of March, A. D. 1887.

(Signed) COOK & DODGE, F. J. SMITH & HELMER & A. J. HIRSCHL,
Sol'rs for Compl't.
BILLS & BLOCK,
Solicitors for Defendants.
BLEIK PETERS,
Solicitor for Addie Kloppenberg.
ERNST CLAUSSEN,
Solicitor for Chas. Hill.

Endorsed: Filed Aug. 8, 1887. H. K. Love, clerk.

81 Also on the same day, to wit, on the 8th day of August, A. D. 1887, a stipulation for amendment of original bill of complainant was filed herein, which reads as follows, to wit:

In the Circuit Court of the United States, Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER CO.
vs.
GEORGE OTT *et al.*

Stipulation for Amendment of Original Bill.

It is agreed that the original bill in this case may be amended by inserting in the body thereof, after the words on the third page of the bill, "a transcript whereof is now on file in this honorable court in said attachment suit now pending herein," the following words, to wit: "And, as appears by the return of the said writ of attachment, to which reference is made, the said writ of attachment was levied upon certain real estate in Scott county, Iowa, belonging to the said George Ott."

July 11, '87.

(Signed) COOK & DODGE, F. J. SMITH & HELMER AND A. J. HIRSCHL,
For Compl't.
BILLS & BLOCK, *Deft's Solicitors.*
BLEIK PETERS,
Solicitor for Addie Kloppenberg.
ERNST CLAUSSEN,
Solicitor for Chas. Hill.

Endorsed: Filed Aug. 8, 1887. H. K. Love, clerk.

82 And on the same day, to wit, on the 8th day of August, A. D. 1887, a supplemental bill and stipulation for filing was filed in the case, and reads as follows, viz:

Stipulation.

It is hereby agreed that the annexed bill shall be filed in the said court, and that the original bill, with any amendments which may be made thereto, shall stand as against the substituted defendants, Auguste Meyer, executrix of the will of Charles F. Meyer, deceased, and J. B. Meyer, assignee of George Ott under general assignment for the benefit of his creditors, and that the answer filed by the said Charles F. Meyer and Charles F. Meyer, assignee, to the original bill shall be taken and deemed to be the answer of the said substituted defendants.

It is further agreed that all the depositions and other evidence

taken or stipulated for in this action since the death of Charles F. Meyer shall be used the same as if the same substituted defendants had been made defendants before the taking of such depositions and evidence, and that the said action shall proceed in all respects the same as if the said Charles F. Meyer, assignee, and Charles F. Meyer had survived and the proceedings were conducted against him as one of the defendants.

Dated this 11th day of July, 1887.

(Signed) COOK & DODGE, F. J. SMITH & HELMER & A. J. HIRSCHL,
Sol'rs for Compl't.
BILLS & BLOCK,
Defendants' Solicitors.
BLEIK PETERS,
For Addie Kloppenberg.
ERNST CLAUSSEN,
Solicitor for Charles Hill.

83 In the Circuit Court of the United States, Southern District of Iowa, Eastern Division of Iowa, *ss:*

SOUTH BRANCH LUMBER CO.
vs.
GEORGE OTT *et al.*

To the judges of the circuit court of the United States for the southern district of Iowa, eastern division:

The South Branch Lumber Company, complainant, shows unto your honors that on or about the 1st day of October, A. D. 1886, it exhibited its bill of complaint in this honorable court *vs.* George Ott, Charles F. Meyer, and Charles F. Meyer, assignee of George Ott under general assignment for the benefit of his creditors, and certain other defendants, and that the said Charles F. Meyer and Charles F. Meyer, assignee as aforesaid, having been duly served with process, appeared thereto and put in his answer to the said bill in his individual capacity and also as assignee aforesaid.

And your orator shows unto your honors, by way of supplement to its original bill, that the said Charles F. Meyer departed this life testate on the 14th day of March, 1887.

Your orator further shows unto your honors that on or about the — day of ——, 1887, the last will and testament of the said Charles F. Meyer was duly admitted to probate in the district court of Iowa for Scott county, and his wife, Auguste Meyer, was duly appointed and qualified and is now acting as executrix of the last will
84 and testament of the said Charles F. Meyer.

Your orator further shows unto your honors that after the death of the said Charles F. Meyer one J. B. Meyer was duly appointed by the district court of Iowa for Scott county as assignee of George Ott under general assignment for benefit of his creditors and has duly qualified as such assignee and is now administering the said trust.

Your orator further shows unto your honors that it is entitled to have the said suit revived and restored as against the said Auguste Meyer, executrix of the last will and testament of the said Charles F. Meyer, deceased, and also as against the said J. B. Meyer, assignee of George Ott under general assignment for the benefit of his creditors, and to have the same relief against them. To the end, therefore, that the said defendants may answer the premises, and that the said suit and proceedings may stand revived, or that the said defendants may show good cause to the contrary—

May it please your honors to grant unto your orator the writ of subpœna of the United States of America, to be directed to the said Auguste Meyer, executrix of the last will and testament of Charles F. Meyer, deceased, and to J. B. Meyer, assignee of George Ott under general assignment for the benefit of his creditors, thereby commanding them and each of them, at a certain day and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to
85 answer all and singular the premises, and to stand and perform and abide such order and decree therein as to your honors shall seem meet; and your orator shall ever pray.

(Signed) F. J. SMITH & HELMER, COOK & DODGE & A. J. HIRSCHL,
Solicitors for Complainant.

E. E. COOK, *Of Counsel.*

STATE OF IOWA, } ss:
Scott County, }

I, E. E. Cook, being first duly sworn, upon my oath say that I am one of the solicitors of The South Branch Lumber Company, complainant in the above-entitled cause; that I have read the foregoing bill and know the contents thereof; that I know the fact that the said Charles F. Meyer died as stated in said bill, and I have personal knowledge from credible information by me received that the said Auguste Meyer has qualified as executor of the last will and testament of Charles F. Meyer, deceased, and that J. B. Meyer has been appointed assignee for George Ott under general assignment for the benefit of his creditors; that the matters and things in the said bill are true to my own knowledge except as to those matters therein stated as *to* information, and I believe the same to be true.

(Signed) EDWARD E. COOK.

Subscribed by the said E. E. Cook and by him sworn to before me this 11th day of July, 1887.

(Signed) F. L. DODGE,
[SEAL.] *Notary Public.*

Endorsed: Filed Aug. 8, 1887. H. K. Love, clerk.

86 In the Circuit Court of the United States for the Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY, Complainant,
vs.
GEORGE OTT and Others, Defendants.
} In Equity.

Stipulation as to Taking Evidence by Complainant.

It is hereby agreed that complainant may take the depositions of such witnesses as it may wish to call at the office of Cook & Dodge, 218 Main street, Davenport, Iowa, on Tuesday, the 15th day of March, 1887, at 10 o'clock a. m., and from day to day thereafter, depositions to be taken before Miss Flora Haddix, notary public, in short-hand, and to be afterwards subscribed and sworn to by the witnesses.

Other evidence may be taken by complainant upon notice given or by stipulation hereafter to be made.

It is agreed that both complainant and defendants may take evidence beyond the time provided by the rules, but after the first of April, 1887, the defendants may compel complainant to close its evidence-in-chief within twenty days from date of giving notice to that effect to complainant or its solicitors in writing, and compl't shall close its evidence-in-chief by May the 1st, '87, unless otherwise stipulated.

87 It is intended to provide for taking the evidence on both sides so as to suit the convenience of both parties as far as practicable without delaying the hearing of the case beyond the June term, 1887, of the said court.

Dated this 3rd day of March, 1887.

(Signed) COOK & DODGE, A. J. HIRSCHL & F. J. SMITH & HELMER,
Solicitors for Complainant.
BILLS & BLOCK,
Solicitors for Chas. F. Meyer; Charles F. Meyer, Assignee of George Ott, and Geo. Ott.
BLEIK PETERS,
ERNST CLAUSSEN,
Solicitors for Addie Kloppenberg and Her Guardian, Charles Beiderbecke.
ERNST CLAUSSEN,
Solicitor for Charles Hill.

Charles F. Meyer, one of the defendants in the foregoing-entitled cause, having died on the 14th day of March, 1887, the taking of above depositions was postponed; and now, at this date, it is agreed that the taking of the depositions may proceed as provided in fore-

going stipulation, to commence at 2 o'clock p. m., this 24th day of March, 1887.

COOK & DODGE, F. J. SMITH & HELMER AND A. J. HIRSCHL,
Sol'rs for Compl't.

BILLS & BLOCK,
Sol'rs for J. B. Meyer, Assignee (Substitued Def't), and George Ott.

BLEIK PETERS,
Sol'r for Addie Kloppenberg and Her Guardian.

ERNST CLAUSSEN,
Sol'r for Chas. Hill.

88 Thereupon, afterwards, to wit, on December 30th, A. D. 1886, a replication to answer of George Ott, Charles F. Meyer, and Charles F. Meyer, assignee of George Ott, &c., was filed, which replication reads in words following, to wit:

In the Circuit Court of the United States for the Southern District of Iowa, Eastern Division, *ss:*

SOUTH BRANCH LUMBER COMPANY, Complainant,
vs.
GEORGE OTT *et al.*
} No. —. In Equity.

The replication of South Branch Lumber Company, complainant, to the answer of George Ott, Charles F. Meyer, and Charles F. Meyer, assignee of George Ott, under general assignment for benefit of creditors, defendants.

This repliant, saving and reserving unto itself all and all manner of advantage of exceptions to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

(Signed) COOK & DODGE, F. J. SMITH & HELMER, A. J. HIRSCHL,
Solicitors for Comp'ts.

89 Also on the same day, to wit, on December 30th, A. D. 1886, another replication was filed herein to the answer of Charles Hill, defendant, which is in words following, to wit:

In the Circuit Court of the United States for the Southern District of Iowa, Eastern Division, *ss:*

SOUTH BRANCH LUMBER COMPANY, Complainant,
vs.
GEORGE OTT *et al.*
} No. —. In Equity.

The replication of South Branch Lumber Company, complainant, to the answer of Charles Hill, a defendant.

This repliant, saving and reserving unto itself all and all manner of advantage of exceptions to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

(Signed) COOK & DODGE, F. J. SMITH & HELMER, A. J. HIRSCHL,
Solicitors for Comp't.

90 And on the same day, to wit, December 30th, 1886, still another replication was filed in this cause to the answer of Addie Kloppenberg, &c., which reads in words following, viz:

In the Circuit Court of the United States for the Southern District of Iowa, Eastern Division, *ss:*

SOUTH BRANCH LUMBER COMPANY, Complainant,
vs.
GEORGE OTT *et al.*
} No. —. In Equity.

The replication of The South Branch Lumber Company, complainant, to the answer of Addie Kloppenberg, an infant under the age of eighteen years, by Charles Beiderbecke, her guardian, a defendant.

This repliant, saving and reserving unto itself all and all manner of advantage of exceptions to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters

and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

(Signed) COOK & DODGE, F. J. SMITH & HELMER, A. J. HIRSCHL,
Solicitors for Compl't.

91 In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division.

THE SOUTH BRANCH LUMBER COMPANY
vs.
GEORGE OTT *et al.*

DAVENPORT, IOWA, *March 24th*, 1887—p. m.

Messrs. Cook & Dodge, F. J. Smith & Helmer, and A. J. Hirschl appear for complainant; Messrs. Bills & Block appear for J. B. Meyer, assignee (substituted def't), and George Ott; Mr. Bleik Peters appears for Addie Kloppenberg; Mr. Ernst Claussen appears for Charles Hill.

Mr. BLEIK PETERS, being first duly sworn, in answer to the interrogatories propounded to him by attorney for complainant, testified as follows:

By Mr. COOK:

Interrogatory 1. You may state your name, age, place of residence, and occupation.

A. Bleik Peters; residence, Davenport, Iowa; attorney-at-law.

2. How long have you lived in Davenport?

A. I have lived in Davenport since 1855.

3. How long have you known George Ott?

A. I don't know if I knew him in 1855; guess I couldn't
92 tell exactly; for the last twenty years.

4. State whether at any time you were attorney for George Ott, as guardian for Addie Kloppenberg, in the matter of the guardianship of Addie Kloppenberg, pending in the circuit court of Iowa for Scott county.

A. Yes, sir; I was attorney in that case; employed by George Ott as attorney.

5. About when was you so employed?

A. I was employed as attorney for the guardianship when the guardianship commenced. Do you want the date when it commenced? I have some notes here. November 17th, 1874, George Ott was appointed guardian of Addie Kloppenberg.

6. Did you continue to act as attorney for the guardianship up to the 27th of April, 1886?

A. Yes, sir.

7. Are you still acting for him?

A. For his successor.

8. For his successor?

A. Yes.

9. Please look at the note now shown you, dated Davenport, Iowa, February 20th, 1886, and due one day after date, to the order of Addie Kloppenberg, for $3,500.00, and signed by George Ott, and the chattel mortgage, which is now shown to you, executed by George Ott to Addie Kloppenberg, dated on the 20th of February, 1886, executed by George Ott, acknowledged by him before you as notary public on the 20th day of February, 1886, and state whether or not these documents are in your handwriting.

A. The documents are in my handwriting.

93 10. Please hand them to the notary to have copies made to be attached to this your deposition, the note marked Exhibit No. "1" and the mortgage Exhibit No. "2." On what date did you draw these papers?

A. On the date stated—the 20th day of February, 1886.

11. State, if you recollect, the actual date when the mortgage was acknowledged before you as notary public by George Ott.

A. The same date—the 20th of February, 1886. Isn't that what the certificate shows?

12. Yes. Where were these papers executed?

A. They were signed at George Ott's residence.

13. What time of day?

A. About noon time; when I went to dinner or when I came from dinner.

14. Did you prepare them about that time?

A. I prepared them in the morning.

15. When did Mr. Ott first direct you to prepare them?

A. The same morning or the day before; a very short time before; I guess the same morning.

16. Did he hand the papers to you at his house after he signed them?

A. No; he kept them there.

17. How long?

A. A month or a fortnight; some time he kept them there.

18. When did you next see them?

A. When did I?

19. After he executed them.

A. Probably not for two or three days. I saw him almost every two or three days.

20. The papers?

A. I saw them when they were delivered to me by George Ott, and I put them in my safe.

21. What did you say about the propriety of recording that mortgage?

94 A. I said that the papers ought to be recorded. He said he was going to record it. Then some time afterward I told him he had better give them to me and I'd put them in my safe, so there was more appearance that they were delivered, because he was the maker of the mortgage and the guardian also.

22. Did you tell him when they were delivered to you to be put in your safe that you would have the mortgage recorded?
A. I?
22*a*. Yes.
A. No.
23. Was there any conversation had between you and him?
A. Not more than I told him the papers ought to be recorded.
24. What did he say to that?
A. He said he would attend to that.
25. You didn't record the mortgage at that time?
A. No.
26. Did you finally record the mortgage?
A. Yes.
27. At the time did you take it to the recorder's office?
A. Yes.
28. I see that the mortgage is indorsed: State of Iowa, Scott county. Filed for record the 26th day of April, A. D. 1886—5.6 p. m. Recorded in Book 2, Chattels, on page 550. H. Vollmer, recorder, W. Puls, deputy. Was that the date when you took it there for record?
A. That was the date.
29. How did you come to take it there for record that day?
95 A. George Ott told me to take it and put it on record.
30. When did he tell you?
A. Probably about noon that day.
31. That same day?
A. Yes.
That is all.

Cross-examination by Mr. BILLS:

Cross-interrogatory 1. Mr. Peters, who is this Addie Kloppenberg?
A. Addie Kloppenberg? She is the daughter of Cornelius Kloppenberg and his wife, his wife being the daughter of George Ott—George Ott, Sr. That is all I know.
2. Addie Kloppenberg is the granddaughter of Geo. Ott, Sr.?
A. She is the granddaughter of George Ott, Sr.
3. Where did Addie Kloppenberg's parents reside before they died?
A. Well, I couldn't tell where they lived. I married them at George Ott's residence a short time before he died. They lived in Davenport, I guess.
4. Did you ever act as attorney for the father or mother, or both of them, of Addie?
A. No; I think—except in some administration case or matter.
5. Well, after the death of Addie's father or mother—either of them—did you act as attorney for the estate that was left?
A. I guess I was the attorney for the estate; I don't know.
6. Did you attend to getting Mr. George Ott appointed guardian for Addie?
A. Yes; I attended to that.
7. How did you come to do it?

96 A. I was requested to do it by Mr. Ott.

8. How much is this mortgage for?

A. $3,500.

9. Did George Ott owe Addie Kloppenberg or have money of Addie Kloppenberg's for that amount? How was that?

A. He had about that amount in his possession as guardian for the estate.

10. Where did he get it from?

A. He got it in 1874; there was reported $450; in 1876, $600. She got an inheritance from her grandfather up in Benton county—some $900; then the railroad made her a tract of 80 acres. She got out of that sum $200; then she got her rents from the farm for years.

11. Did you know that Mr. Ott owed her this $3,500 or had $3,500 of her money at the time?

A. Yes; according to all the reports; he said that himself.

12. State how he came to make this mortgage to her.

A. I told him on the order of Judge French he should give real-estate security for the money. He said he couldn't do it. He had the money in his business and could not take it out of his business, but he'd make a chattel mortgage. He said he would make that, and that would secure her. Judge French wanted a real-estate mortgage, but would talk with Judge French himself; that was all he could do.

13. Judge French is judge of the probate court in this county?

A. He was when he made that order.

14. You told Mr. Ott that he must give some security for the money in order that the court might be satisfied?

A. Yes.

97 15. Mr. Ott said he could not give any real-estate security. He could not take the money out of his business and invest it in real estate. He said he had invested the money in his business?

A. Yes.

16. That is the reason he gave you for making this mortgage?

A. Yes.

17. He had been acting as guardian for Addie Kloppenberg since 1874?

A. Since 1874.

18. Had received all the money that belonged to her?

A. Yes.

19. And had given no security for it—did not invest it except in his own business?

A. No; never outside to other parties; that is all I know.

20. You say the mother of Addie Kloppenberg is still living?

A. As far as I know she is still living; I guess I have seen her, probably, within a year.

21. How long has Addie Kloppenberg lived with her grandfather, George Ott?

A. As far as I know she lived with her mother one year; most of the time since 1875.

22. How old is she now?

A. She was a baby then; she is probably 14 years old; I don't know exactly.

23. When you made that mortgage for $3,500 did you figure up and find out just how much of Addie Kloppenberg's he had?

A. No; I did not figure it up at that time, but that was about the amount the mortgage was made for in 1886. We made a report in May, 1886. I figured it up to this time; it amounted to $3,647.86.

24. In May, 1886?

A. March the 1st, 1886.

98 25. This note was made drawing interest from March 1st, 1885, I think. Has Mr. Ott paid any part of that to Addie Kloppenberg, nor his successor in office, Mr. Beiderbecke?

A. No, sir; not so far as I know.

26. Do you — whether the bond which Mr. Ott gave as guardian of Addie Kloppenberg—whether the sureties are good for anything?

A. Worthless.

27. Mr. Ott is insolvent, as you understand it?

A. As I understand it.

28. The only show that girl has got to get her money is to get it out of this mortgage, as far as you know, is it?

A. Yes, sir.

29. Did you attend to making that report to the court in May, 1886?

A. Yes.

30. Was this mortgage reported to the court at that time?

A. Yes; it was reported at that time.

31. You say when you made this mortgage you wrote it at your office?

A. Yes.

32. When you went up to dinner you go by Mr. Ott's house, do you?

A. Yes.

32*a*. You took it along?

A. Yes.

33. And stopped over either going or coming, and he signed it?

A. Yes.

34. And you left it there? Was that when he said he would see to having it recorded?

A. I told him to have it recorded and he said he would see to it.

35. Did you say anything more to him about it before he brought it to you and gave it to you?

99 A. I told him some time afterwards he had better leave the mortgage in my office about a fortnight or three weeks afterwards.

36. Where was that?

A. Why, somewheres where I saw him on the street; not in my office.

37. How long after was it before he brought it to you—gave it to you?

A. Well, within a month from the time it was made.

38. You say it may have been within 2 weeks?

A. Some two weeks or a month when that happened.

39. When he brought it to you and gave it to you what did you do with it?

A. Put it in my safe. He would give me notice when I should put it on record.

40. Did he tell you why he didn't want it put on record right away?

A. He said not right now; it might hurt his business.

41. What did you say to that, anything?

A. Nothing at all, for he knew that matter best.

42. Was there anything more said about recording it until the 26th of April, 1886?

A. No, I guess not.

43. What did Mr. Ott say at that time?

A. He said he wanted me to go and put that mortgage on record.

44. Did you do it?

A. Yes, sir.

45. That same day?

A. Yes, sir.

46. What time in the day did he tell you?

A. Some time in the afternoon.

47. Do you remember whether it was in the afternoon or forenoon?

A. I think it was in the afternoon.

48. That was all he said about it, was it?

A. Yes.

49. There was no other consideration—no other money in
100 this mortgage except this trust fund that he held of Addie Kloppenberg's, was there?

A. That is all.

50. What property was it made to cover?

A. It covered the stock in the building here on Front street, this three-story brick building, and stock in the factory.

51. Does it cover any goods except what was in the warehouse here?

A. All that was in the warehouse and in the factory, that three-story warehouse on Front street.

52. Mr. Ott at this time was carrying on the business of manufacturing sash, blinds, and doors, that sort of business, was he not?

A. Yes.

53. In Davenport?

A. In Davenport, Iowa; yes, sir.

54. Did a pretty large business, didn't he?

A. It so appeared to me.

55. Do you know whether or not at that time he had any real estate by which he could have secured Addie Kloppenberg's money?

A. I do not know that he had any other real estate than his homestead and factory and warehouse.

56. Were the factory and warehouse mortgaged at that time?

A. I understand they were; everything was mortgaged—the homestead, warehouse, and the factory—I understand.

That is all.

(Signed) BLEIK PETERS.

STATE OF IOWA, } ss:
Scott County, }

Subscribed and sworn to this eleventh (11th) day of April,
101 A. D. 1887, before me—

FLORA HADDIX,
A Notary Public in and for Scott County, Iowa.

Witness my hand and notarial seal the day and year last above written.

(Signed) FLORA HADDIX,
[SEAL.] *Notary Public, Scott Co., Iowa.*

102 Mr. WILLIAM HEESCH, a witness on behalf of complainant, being first duly sworn, in answer to interrogatories propounded to him by counsel for complainant, testified as follows:

By Mr. COOK:

Interrogatory 1. State your name, age, place of residence, and occupation.

A. William Heesch; will be 30 my next birthday; I live at 701 West 3rd street; occupation, groceryman.

2. State whether or not you were employed by George Ott at any time; and, if so, when that employment commenced and ended, and what the character of the employment was.

A. I was employed by George Ott from July, 1872. Do you wish to know the nature of the occupation?

3. Yes.

A. I started there as a boy, primed sash and such other general work concerned with glazing, and finally took a shipping department, and in November, 1876, I took charge of the office and had charge of the office until April the 27th, 1886.

4. In having charge of the office what duties, if any, did you have in relation to keeping the books of account?

A. I was the principal party who kept the books.

5. Were the books generally kept under your direction from November, 1876?

A. Yes, sir.

6. Did you make most of the entries in the books yourself?

A. Yes, sir; most of them.

7. Who had charge particularly of the ledger, posting the accounts?

A. I did all of that myself.

103 8. You may state whether you have present any of the books of account of George Ott; if so, please identify the books,

state what each one is, and have it marked by the notary as exhibits, commencing with the No. three (3), Exhibits Nos. 3, etc.

A. Book for showing orders for shipping.

Marked Exhibit "3."

9. Now the next one.

A. The next one will be the day book.

10. When does that commence?

A. Jan'y 28th, 1886.

11. When did it end with Mr. Ott?

A. April 26th, 1886.

Marked Exhibit No. "4."

12. What is the next one?

A. The next one is the journal, which was actually of no importance, as that merely took the day-book items and condensed them; that was in my regular line of work; commenced April 13th, 1885, and used up to the time of the assignment.

Marked Exhibit No. "5."

A. The next one is the ledger.

13. Commenced at what date?

A. At the 13th of Feb'y, 1885, and used up to the time of the assignment.

Marked Exhibit No. "6."

A. This book I kept as a separate memorandum of book accounts, cash and bills payable.

14. Commenced when?

A. February 26th, 1886.

Marked Exhibit No. "7."

A. This book I had as a trial-balance book; commenced June 27th, 1878.

Marked Exhibit No. "8."

104 15. That is what you call your trial-balance book, this last one that you spoke of?

A. Yes, sir.

16. Will you explain how you made up the trial-balance book?

A. I took the items just as they were on the ledger—debit and credit items.

17. Of every kind?

A. Of every kind; yes, sir.

18. What was the object in making the trial balance?

A. My own use was that I wished to convince myself that I was making correct entries.

19. That is, that your books balanced?

A. Yes; the book being put up in form more convenient than the ordinary sheet of paper, that is how I came to get it.

20. The books of account of Mr. Ott, during the time you had charge of them, were kept in the double-entry system, were they?

A. Yes, sir.

21. Could you tell from the books of account of Mr. Ott what the condition of the business was and what the financial standing was?

A. No, sir.

22. Why not?

A. Because they have never taken an inventory of the stock.

23. Had there never been an inventory taken during the time you were there?

A. Not until somewhere near a month before the assignment, and then only partly, as far I personally know.

24. You had on the ledger what you called the factory account, did you not?

A. Yes, sir.

25. How was that account kept—how was it made up?

A. It was made up of all merchandise; in fact, everything
105 connected with the factory was charged to that account; also all lumber and any other material that was bought and was used at the factory was charged to factory account; also all labor that was connected with it.

26. Did you have a merchandise account separate from that?

A. Yes, sir.

27. How was that made up?

A. That was made up of such goods that were bought that were placed in the warehouse, such as glass, putty, and in fact all items that were bought and taken into the warehouse, not connected with the factory at all.

28. Then of course merchandise was credited with all shipments made—all sales made. Did you ever make any adjustment or statement of the factory account on the ledger?

A. In what regard?

29. In way of closing it or getting the balance that should be transferred to any other account. Anything of that kind?

A. I don't know as I did.

30. For instance, all the lumber and everything that was manufactured you charged to the factory account?

A. Yes, sir.

31. How did the factory account ever get any credit to offset this charge against it?

A. We did start to keep a memorandum of all goods manufactured there which were hauled and taken up to the warehouse; every load, of course, there was a memorandum taken of it. We figured it up at its market price—that would be guessed at—and credited to the factory account from time to time. I did it until it was more work than I could attend to.

106 32. About when did you cease making accounts of that kind? If necessary, look at the account to refresh your memory.

A. This book would not show it. Some of the previous ledgers would show when the last credit was made.

33. Did you keep an accurate account of all bills payable and accounts that were falling due or would fall due for goods received?

A. Yes, sir.

34. Do you know that entries were made for all goods that were shipped out and sold from the factory?

A. Yes, sir.

35. Where did you get the information to make these entries from?

A. I was keeping track of all the shipments myself.

36. What did you do in reference to keeping track—how did you do it?

A. All orders received I entered in the order book; all shipments made I saw that bills were made for them.

37. And your merchandise account would show every shipment made, would it?

A. Yes, sir.

38. Would the original entry show to whom the shipment was made?

A. Yes, sir.

39. And the price?

A. And the price.

40. Did Mr. Ott, in his business, very frequently order goods from the manufacturers at Chicago and elsewhere and then ship them to customers of his without breaking bulk at all?

A. Yes, sir.

41. Was that done in any instance?

A. May have been done in one or two instances.

107 42. Were all goods which you ordered from the manufacterers or lumber dealers unmanufactured goods, simply the raw lumber—were all these goods unloaded here and the material afterwards shipped out, or did you sometimes have the goods shipped to the parties without unloading?

A. No lumber was bought and shipped in that way.

43. Was anything?

A. Bought, maybe, a car-load of mouldings, bought from Wright of Merrill, and shipped by them to Omaha.

44. When was that?

A. May have been two or three months before the assignment.

45. Do you know of any instance where goods, which is material or merchandise, were ordered and not brought here at all, but sent directly to purchasers from Mr. Ott?

A. Those few cars that I referred to will be the only ones which we have received in cars otherwise than what would generally be unloaded, and if these cars were bought without being unloaded they were shipped directly from the shipping point direct to the customers.

46. If you can, tell us what cars were bought or ordered by Mr. Ott from dealers in Chicago and elsewhere and under his direction shipped to Mr. Ott's customers elsewhere than at Davenport?

A. It will be nothing but this one or two cars that would have

been shipped directly. We never had any other cars but what we unloaded.

47. Where did you keep this material that was received?

A. The lumber was unloaded and put down at the yards, and glass and such other goods that were kept and stored in the warehouse were unloaded and put there.

108 48. Did you have a side or spur track extended from any railroad down to the factory or manufacturing premises?

A. There was a side track that was known for our house, on the Rock Island road.

49. But the lumber was hauled by wagons?

A. Yes, sir.

50. You had no railroad track lying directly to the premises?

A. No, sir.

51. Can you tell by the examination of the books what debts, notes, or accounts or other claims against Mr. Ott were paid from the 20th of April up to the 27th of April, 1886, the date of the assignment?

A. Yes, sir.

52. Well, will you take the books and give a statement of the parties to whom such payments were made from the 20th of April, 1886, up to the assignment, and the date, and the amount? In each case give the residence of the party, if you know it.

A. I paid to C. A. Ficke, April the 20th, 1886, to cheque on bank as part payment on note and mortgage on warehouse, $500.00; same date paid my note, due to-day, in favor of P. C. Hanford Oil Co., Chicago, $452.23; April 20, 1886, sight draft in favor of the Hamilton Rubber Co., $41.02; credit bank for discount, $13.48; paid cash for exchange on drafts, .25; paid George Ott, Sr., on account, $2.00; April 21st, paid cash for switching charges on six C., B. & Q. cars, six dollars; paid my note due in favor of the South Branch Lumber Co., $500.00; same day paid my note due in favor of M. B. Adwater & Co., $450.00. The entry here will show that the note was paid entire, while in fact we drew on them in the

109 bank for $225.00. That was the actual payment of only $225.00.

By Mr. BILLS: Did you actually pay them $225.00?

A. We paid their note for $450 and drew on them by sight draft for $225, and for that sight draft we sent them a new note; it was virtually only a payment of $225.00. There will be a few more like that. Paid for a Chicago exchange draft sent to M. B. Adwater for interest, $3.25; paid to Fred. Henselman, $50.00 on account unloading lumber, etc.; paid to George Goettsch, balance account, $156.20, and the sams date, the 21st, paid to C., M. & St. P. Railway Co. for freight, $318.74; paid cash to George Ott, Sr., on account, $75.00; credit bank for discount on deposits, $24.37; April 22nd, paid cash to Sieg & Williams, balance of account, $418.00; paid to M. J. Rohlfs, treas., county taxes on residence in full for 1885, $75.75; paid cash to a laborer at the factory, $1 70; paid to Ernst Claussen on note, for interest on note, and mortgage on homestead, $105; paid to J. D. Brockman for account of George Ott, Sr., $71.28; to

balance an account that they had, $16.62; paid to Thomason & Bahl to account of George Ott, Sr., clothing, $67.00; paid to William Claussen, balance account, $64.99; paid my note due in favor of T. H. Sheppard & Co., Chicago, $300.00; paid a sight draft in favor of B. F. Sturtevant, in East, same place, $35.20; paid cash to A. Riepe, balance account, $15.16; paid to H. J. Witt, balance account, $10.23; paid cash to H. Voss, $4.40; balance of account, .60; paid to H. L. W. Carstens on accounts of George Ott, $4.75; paid cash to Henry Thode to balance account, $5.51;
110 paid cash to Charles Naeckel & Son, $9.38; credit First National Bank for discount on deposits, $28.53; paid cash for exchange on drafts, .20; paid cash to Henry Korrhs, $17.68; paid to George Ott, Jr., on account, $27.54; paid cash for postage and telegram, $1.25; April 23rd, paid F. Kauffmann in full for bill rendered for repairs account, $127.35; George Ott, Sr., $134.40 to amount of account against W. O. Kulp, he having rendered bill for certain dental services; paid cash for labor, three days at factory, $9.00; paid to Garstand & Valentine, amount of bill rendered for work at factory, $93.60; paid to Reimers & Weidmer, balance amount of account, $64.10; paid cash for freight charges on two barrels of linseed oil and one box of planing knives, $2.30; paid cash for freight charges on two barrels of putty and cartage, $2.99; paid cash to Fred. Henselman on account unloading lumber and use of team, $25.00; April 24th, gave order to F. Richter against Scharmwebber, $21.50, to pay bill of T. Richter against us; paid to Robert Krause, $25.40; paid to C. H. Hamann, cash, $71.85, amount of our bill, $2.85; paid to Peter Lamp & Co., $17.51; paid to Fred. Henselmann on account hire of team used at the store, $50.00; paid cash
111 to George Ott, Sr., $20.00; paid cash to Henry Goettsch on account, $150.00; paid my note due to-day in favor of Grupe & Murray, $283.21; paid sight draft of George Ott, Jr., at Keokuk, for travelling funds, $40.00; paid a sight draft in favor of S. J. Schiener, balance of account, $32.40; credit First National Bank for discount on deposits, $19.44; April 26th, paid to H. Goettsch, balance account, $152.00.

53. Where does he live?

A. Davenport. Paid to John F. Hamann for feed, $48.75; paid to M. Kunkel on account, $100.00 (lives in Davenport); entry of a transaction with Chris. Mueller; that was cancelled later on, and stands as follows: Chris. Mueller rendered bill for interest on note for $1,520.28, 7 months and 6 days, $72.97; on note of $1,220.28, 48 days, $13.01. I issued drafts in his favor against account of J. Moetzel, 60 days, March 23rd, $330.57; J. Moetzel, 60 days, April 23rd, $185.23; Howell & Jewett & Co., 90 days, April 24th, $744.31, which, less allowance for discount at 8 per cent., $20.65, is to pay balance towards note of $1,220.28.

54. And what was the amount of the payment?

A. $1,239.46, leaving a balance of $66.80 yet to pay on the note; $1,892.19 as was due August 1st, 1885, endorsed May for $371.91 and March 6th, 1886, for $300.00; paid cash for express charges on

one box from W. F. Block, .50; gave to T. McClelland & Co.,
112 draft on account on Edwards & McCullough Lumber Co. at 90 days, April 24th, $674.74, which placed on account $606.80, being less discount of $13.94; paid for interest and protest fees on Williamson & Libby's draft, $4.87; credit First National Bank for discount on deposit of to-day, $40.92; paid cash to hands employed at factory in full for labor for week ending April 24th, $708.66; paid cash to W. Heesch on account, $20.00; H. Mill on account, $17.35; George Ott, Jr., on account, $152.00; George Ott, Sr., on account, $240.00; Robert Henne on account, $12.00; paid cash for labor account, $156.45; paid cash for postage, $1.00. That is all the transactions up to the date of the assignment.

Adjourned until March 25th, 1887, nine o'clock a. m.
Adjourned until March 25th, 1887, two o'clock p. m.

55. Now, you please state whether or not a large amount of these payments that were made from the 20th to the 26th of April, inclusive, 1886, were of accounts due from George Ott for personal matters in the city of Davenport.

Objected to as leading.
Question withdrawn.

56. You will please state for what purpose these various payments were made and on what account.

A. Why, I suppose *as* I read the payments as they were made, showing what they were paid for; paid for accounts as they
113 were justly due to parties.

57. State whether or not you know whether some of these payments were for debts of Mr. Ott on personal accounts, independent of his business.

A. Such as clothing and groceries would be personal accounts. Yes; there would be some personal.

58. What was the bill to Mr. Kulp for?

A. That was for dental services rendered him, and I suppose other parties that he had worked for.

59. What, if any, directions had Mr. Ott given to you between the 20th and the 27th of April as to having any of these accounts presented or calling on the parties to present them?

Objected to as leading.

A. For most of these accounts we had the bills in the office.

60. State whether or not Mr. Ott directed you to call for any of these accounts.

A. There may be a few instances.

61. State in what instances, if you can.

A. Maybe Riepe, the drug-store man; maybe I asked him for his bill.

62. Who else?

A. I can't call to memory any others.

63. How did you come to go to Mr. Riepe for his bill?

A. I used to stop in there occasionally, and he said he would make

out his bill; within a day or two succeeding it I finally told him he had better bring around the bill.

64. What, if anything, did Mr. Ott say to you about getting his bill?

A. I cannot remember that he requested me directly to get it.

114 65. What direction, if any, did Mr. Ott give you as to getting any bills?

A. I don't remember him giving me any directions for getting any of the bills.

66. State whether or not he said anything about getting any of the bills.

A. No, sir; he did not.

67. State whether or not you had at any time during the time you were employed in Mr. Ott's office paid as many bills of a personal nature for him during the same period of time as from the 20th to the 27th of April, 1886.

Objected to as leading and asking for the opinion of the witness and not for facts.

A. I don't remember of paying such an extent of bills at one time.

68. Is George Ott, Jr., the son of Mr. George Ott, Sr., who is the owner of the factory?

A. Yes, sir.

69. State whether or not he was employed in the factory or in the business.

A. He was in the employ of Mr. Ott, Sr.

70. Do you know what the compensation was that was received by George Ott, Jr.?

Objected to as immaterial and incompetent.

A. As far as what was entered on the books.

71. Well, what was it according to that?

A. I would require the books to state it definitely as a fact.

72. Do you know whether he was on a salary?

A. Yes, sir.

73. What was that salary?

A. I think the salary varied at different times.

115 74. Do you know whether it was a salary or commission?

A. It was a salary.

75. What was it in April, 1886?

A. If I remember right at the rate of $75 a month.

76. What was it in 1885?

A. I could not say.

77. Will you look at the books and see if you can tell it from that?

A. Yes.

78. Please examine and see.

A. There is a credit on the ledger, January 22nd, 1886, $900.00, which would be the salary for 1885.

79. Now, there were some payments that were made to parties or a party by the name of Goettsch that you referred to. Please turn

to the original entries on the day book for that. Do you know whether George Goettsch was any relation of Mr. Ott's?

A. I understand he is his brother-in-law.

80. And Henry Goettsch?

A. Also his brother-in-law. I notice on the day book on the date of April 5th, 1886, there is a credit to George Goettsch on account for back pay due him to date for 1883, amounting to $9, and then taking it up month by month through 1884 and 1885, crediting him with certain amounts for each of these months.

81. Can you explain this entry; how that was gotten at; how that is?

A. I understand from Mr. Ott that he agreed to allow George Goettsch a certain amount per week and keep it for him as a saving. Not having the amounts from time to time, I naturally did not give any credit on account until they were handed to me.

82. Who handed you these items?

A. Mr. Ott.

116 83. And on the 21st of April, 1886, there is a credit paid to George Goettsch for check on First National Bank to balance account, $156.20. Do you know how that account was arrived at?

A. That would balance this item there of April 5th; that was the payment of that item.

84. I understood you to say after the adjournment last night that you desired to correct a statement you had made in regard to two cars of moulding which had been purchased by Mr. Ott and shipped directly to the customers of Mr. Ott without being unloaded there. If you desire to make any correction now you may do so.

A. One car that I had stated was shipped from Wright to Omaha; one from the Conly Lumber Co., Oshkosh, shipped to Atchison, Ks.

85. And the one that was received from Wright came to Davenport and then was shipped to Omaha?

A. I don't exactly remember whether there was part taken out of the car or not. It occurs to me that there was some part of the mouldings taken out that did not belong in that order.

86. That is one car. What about the other one?

A. This was the second car I was referring to last.

87. Do you know of four cars containing glass being taken away from the track of the C., M. & St. P. in Davenport about the 27th or 28th of April, 1886?

A. Yes, sir.

88. Are you able to give us the numbers of these cars?

A. Yes, sir.

89. Please do so.

A. Cars No. 4420 and 13138, transferred from car 3134, glass from Washington Glass Co.; car 2673, glass from D. O. Cunning-

117 ham; car 15182, transferred from 16688, glass from D. O. Cunningham; car 2165, glass from D. O. Cunningham—that is, five cars the goods were in—five cars, being virtually bills for four. One car was transferred at Chicago into two cars.

90. Now, can you state from any of the books of account or memoranda when these cars were received in Davenport?

A. The way-bills would show when they arrived.

91. Give us the dates, whether it was the same time or different times, and specify as to each car the date of its arrival.

A. Cars 4420 and 13138 arrived March 27th, 1886; car 2673 arrived March 27th, 1886; car 15182 arrived April 23rd, 1886; car 2165 arrived April 9th, 1886.

92. Do you know what was done with these cars when they arrived here or after their arrival?

A. They were standing on the railroad tracks.

93. Whereabouts?

A. In their yards, down here on Front street?

94. What, if any, notification had been given to Mr. Ott or to you for him on the arrival of the cars; what, if anything, about sending in the way-bills or bills of lading?

A. I used to make it a point to go and inquire about the arrival of cars, and I have seen these cars there.

95. State whether or not the way-bills or bills of lading were sent to you or Mr. Ott by the shippers.

A. Yes, sir.

96. Did you get any minute or notification from the railroad company with regard to the arrival of these cars, either a verbal notification or written one?

A. A verbal notification in the office.

118 97. What did Mr. Ott or you for him do in pursuance of that knowledge?

A. They were pushing us to get them unloaded, and of course we got to unloading them as soon as we could.

98. State whether or not you did unload them or any part of them.

A. We had taken part out of one of the cars.

99. How—by team?

A. By our team; yes, sir.

100. What was the regular course of business between you and the railroad company in regard to the delivery of cars for him? Where were the cars placed and what was done?

A. They placed the cars in their yard, wherever it would be suitable to them to have them stand.

101. What was the custom in regard to the speedy unloading of cars or allowing the cars to stand with the material in them some time?

A. At that season of the year—March and April, 1886—we having considerable other business, being the time of shipping, we would not unload cars until we needed some of the goods.

102. You say the railroad company were pushing you to unload these cars?

A. 'Tis most natural they always expect cars unloaded as speedily as possible.

By Mr. BILLS: But about these particular cars—do you know?

Object to the answer as not responsive.

A. They were not urgently pushing us.

103. Had they made any request to you about unloading these cars?

A. They had asked us to have them unloaded.

119 104. What did you say to that?

A. That we would unload them as soon as we could possibly get at it.

105. Did they call your attention to it more than once?

A. That I cannot recollect.

106. Was there any special reason why you delayed unloading these and other cars that were received about that time?

A. The reason was that we were kept quite busy shipping, and that was the most of the cause why the cars were not unloaded as promptly as might have been.

107. Do you mean your force of men were kept busy in shipping instead of unloading cars?

A. Yes, sir.

108. Do you remember which particular track these four cars stood upon?

A. They did not remain on any one particular track any length of time.

109. Do you know whether Mr. Ott had in any way made payments for these four cars of glass, either by acceptances or note or otherwise?

A. I could tell by the books.

110. Won't you refer to the books and see and let us know the date of their payment? Look at April 5th.

A. On April 5th accepted draft in favor of Cunningham.

111. How many of these cars did that cover?

A. That covered three of Cunningham's cars; and April 1st accepted draft in favor Washington Glass Co. for $1,199.44. That covered one of these three cars. That will cover the one of the Washington Glass Co.'s.

112. State whether or not the cars had arrived here and been examined by you at or before that time.

A. The cars had arrived at or before that time.

120 113. What was the amount of these drafts of April 5th?

A. These drafts of April 5th amounted to $2,573.43, which includes the payment for one car received previous to the last three cars.

114. What was the value of the one car that had been previously received and was included in the draft?

A. $1,099.17.

115. Among the items of payment that you referred to yesterday as being made between the 20th and the 27th of April, 1886, was a payment of interest to Mr. Claussen—I don't have the date here of that payment—for interest on mortgage or loan on homestead. Will you please find that item?

A. April 22nd.

A. Yes, sir.

137. I now show to you the book marked Exhibit No. 3 and called the trial-balance book, and call your attention particu-
124 larly to the statement of balance dated December 22nd, 1884, and February 12th, 1885, and ask you by whom these statements were made up.

A. These items were entered by me.

138. Where did you get them?

A. From the ledger.

139. This is one of the books that was kept in the regular course of business?

Objected to as leading.

140. State whether or not it was one of the books that was kept in the regular course of George Ott's business.

A. It was a book I kept there.

141. State whether or not it is one of the books of account kept in the regular course of business?

A. It was not a request of Mr. Ott's; I kept it more on my own personal account than his.

142. Was it used in his business?

A. Yes, sir.

143. You may state whether or not these statements of balances of December 22nd, 1884, and February 12th, 1885, are correctly entered upon the ledger.

Objected to as immaterial and incompetent and because the book has not been offered in evidence by the plaintiff.

Now plaintiffs offer in evidence so much of the said book as contains the statements of the balances of December 22nd, 1884, and Feb. 12th, 1885.

Objected to for the reason that if it is a book of account part of it cannot be offered; the whole must be offered; part is incompetent and immaterial; if it is not a book of account it is not admissible at all.

125 144. Will you take the time now to figure the amount of accounts payable under the balance-sheet of Dec. 22nd, 1884?

A. The amounts of accounts payable, as shown by the balance-sheet, was $21,803.31.

145. What does the balance-sheet of that date show the bills payable to have been?

A. It shows them to have been $67,078.71.

146. Now, if you will take the statement of Feb. 12th, 1885, and figure the amount of accounts payable under that statement?

A. The amount of accounts payable is $22,885.0–.

147. And what does the trial balance show the bills payable to have been at that time?

A. $72,070.54.

148. Are you able to tell from the inspection of the books whether there had been much variation in these figures between the two

dates—whether they had risen or been diminished to any large extent—that is, the accounts payable and bills payable?

A. It would appear that the accounts payable is about $1,000.00 more and the bills payable about $5,000.00.

By Mr. BILLS: How they vary—whether they were higher or lower; how they average between these dates.

A. I don't think I could recollect.

149. Are you able to state, either from the books or from your personal knowledge of the business, whether from the 22nd of Dec., 1884, up to the 12th of Feb., 1885, the amount of accounts payable and bills payable had fallen below the amounts shown on the balance-sheet of Dec. 22nd, 1884, to any considerable amount?

126 A. The amount is greater the 12th of Feb. than it was in Dec.

150. But the question is whether at any date between it had fallen below the amount shown on Dec. 22nd, 1884?

A. I think not.

151. Will you please state from the balance book of Dec. 22nd, 1884, and also of Feb. 12th, 1885, what was the amount of valuation placed upon the warehouse, the store and fixtures, in the account covering the warehouse?

A. $16,212.02 at each date, including the store and fixtures.

152. Now, please give the amount of bills receivable at each of these dates.

A. Bills receivable, as shown Dec. 22nd, 1884, $1,520.36; bills receivable, as shown Feb. 12th, 1885, $3,208.50.

153. You may state whether or not, in your knowledge of the business, the bills-receivable account amount, between the 22nd of December, 1884, and the 12th of Feb., 1885, exceeded to any considerable extent the figures $1,520.36, of Dec. 22nd, 1884, and the figures $3,208.50, of Feb. 12th, 1885.

A. I think not.

154. Did you in that business, in the early part of 1885 and latter part of 1884, have any large amount of assets represented by bills receivable, according to the course or custom of Ott's business?

A. You wouldn't call open accounts as bills receivable?

155. No; not at all; nor you wouldn't either.

A. No; no more than what the books would show.

156. My question is whether the assets at any time were

127 largely represented by bills receivable, not as to what the books show—as a fact, from your knowledge?

A. No, sir; they were not.

157. State whether or not any other trial balance was made and entered in the balance book between the dates Dec. 22nd, 1884, and Feb. 12th, 1885.

A. I do not find any made between those two dates.

158. I ask you whether or not you recollect of there being any trial balance made that was not transcribed between those two dates?

A. I do not.

159. I ask you when before the 27th of April, 1886, and while you

were in Mr. Ott's employ, an inventory was made of his goods and assets?

A. A part inventory was made by myself.

160. When and of what?

A. About a month before the assignment.

161. Have you got that inventory—a memorandum of it?

A. I think it will be with other papers in Mr. Ott's possession.

162. What other inventory, aside from that one, had been made during the time you were in the employ of Mr. Ott?

A. None that I know of.

163. To what extent did this inventory show Mr. Ott's assets and the valuation of them; what part of the property was inventoried?

A. I inventoried the stock in the warehouse.

164. And anything else?

A. And such glass as was still unloaded from the track—glass, doors, and blinds.

165. Was that anything near a complete inventory of all the property that he had at that time?

A. No, sir.

128 166. Then, it is a fact that no complete inventory of Mr. Ott's merchandise and property in assets had been made during the time you were in his employment prior to April 27th, 1886?

A. There was no complete inventory at which I was present.

167. Do you know or did you ever hear of an inventory being taken during that time except the partial inventory taken by you?

A. At the time I took the partial inventory I supposed Mr. Ott had taken an inventory.

168. Did you ever hear of any inventory being taken except that one taken by you?

A. No, sir.

169. Was that carried into the books in any way?

A. No, sir.

170. Or a balance-sheet made up including that?

A. It was made out in the shape of a statement to the South Branch Lumber Co.

171. That is in the way of a statement?

A. Yes, sir.

172. Was it made for the purpose of making that statement, with that in view?

A. Yes, sir.

173. Now, I show to you a letter dated January 23rd, 1885, directed to the South Branch Lumber Co., Chicago, Illinois, signed George Ott (H.), and pinned to it a statement dated Davenport, Iowa, Jan. 23rd, 1885, and entitled at the heading thereof "Statement of the financial standing of George Ott," and ask you to examine the said letter and statement and tell in whose handwriting it is.

A. The same is in my own handwriting.

174. How did you come to make that statement and write that letter?

129 A. I wrote that letter and made that statement at the request of Mr. Ott.

175. How did you make up that statement; from what sources?
A. From figures that he had put down for me on paper.
176. State whether or not all the figures that are contained in here were given to you or dictated to you by Mr. Ott, Sr.
A. Yes, sir; they were all put down at the dictation of Mr. Ott.
177. For what purpose was the statement made, if you know?
A. Made to satisfy the request of the South Branch Lumber Co.
178. Because of the request of the South Branch Lumber Co. for a statement, you mean?
A. Yes, sir.
179. How long were you engaged in making that statement?
A. Mr. Ott figured it up while I was to dinner and left the paper for me to write out and send it.
180. Do you know whether the request from the South Branch Lumber Co. was verbal or by letter?
A. I think it was both.
181. Which came last—the verbal or the letter?
A. To my recollection, the letter.
182. Do you know how long after that letter was received it was before the statement was made out by you under Mr. Ott's direction?
A. I can't state definitely. I don't recollect.
183. Do you know whether or not it was the same day?
A. Not to my recollection.
184. Do you think it was within a day or two?
A. I can't say.
130 185. Do you know what was done with the statement when it was completed?
A. When I wrote that I put — in an envelope, sealed it, and directed it to the South Branch Lumber Co.
186. Send it by mail?
A. Yes, sir.
187. Were you present at any time while Mr. Ott was getting these figures?
A. I was, in the first part.
188. Where did you get them from?
A. He asked me for the ledger, and I handed it to him.
189. Then what?
A. While he was engaged with it, it was noon time and I went to dinner, and when I returned he handed me the paper with these figures, showing me the statement I should copy and send to the South Branch Lumber Co.
190. You were his book-keeper at that time?
A. Yes, sir.
191. What, if anything, did he ask you to do in reference to figuring or ascertaining any of the balances that are down in that statement?
A. He didn't ask me to figure up any of them.
192. Do you know whether or not the statement is correct in accordance in amount thus shown by the ledger?
A. Whether I know it is correct?

193. Yes, sir.

A. I do not.

194. Do you mean you do not know whether the amount stated in the statement corresponds with the balances thus shown by the ledger?

A. I haven't compared it.

195. Have you ever had your attention called to the matter by Mr. Beidler when he came here?

131 A. Not personally.

196. In the presence of Mr. Ott?

A. No, sir.

197. Did you hear any conversation between him and Mr. Ott in regard to that statement and another one you remember?

A. No, sir.

198. Will you now take the ledger of that date and state how the figures correspond with what were upon the ledger?

Objected to as immaterial and incompetent because the ledger is the best evidence of what it contains.

199. I will ask you first to turn to bills-payable account on the ledger of George Ott and state what that account shows the balance of bills payable to have been on the 23rd of January, 1885.

Objected to for the same reason as the last preceding interrogatory.

A. I can't state that by looking at this ledger.

200. Then I shall have to ask you to have the books, consisting of the ledger, day book, and cash book, previous to this set of books produced.

I object to that question also, because it relates to no issue raised by the pleadings in this case or to any allegations made in the bill.

Adjourned till 9 o'clock, March 26th, 1887.

201. Have you produced the ledger and cash book called for yesterday afternoon?

A. Yes, sir.

202. Are these the books now shown you?

132 A. That's the ledger, and the other one the cash book.

The ledger marked Exhibit No. "15;" the cash book marked Exhibit No. "16."

203. State whether or not since adjournment yesterday you have figured up on the ledgers of George Ott what was the amount of bills payable owed by him on the 23rd day of Jan., 1885.

A. Yes, sir.

204. State the amount.

A. The amount of bills payable on the 23rd of Jan., 1885, was $72,167.16.

205. Have you been able in the time you have had to figure up the amounts of the accounts payable?

A. No, sir; didn't make any attempt.

206. Did you figure the amount of bills receivable at that date?
A. No, sir.
207. State, if you know, what was included in the account called warehouse as contained in the statement of Jan'y 23rd, 1885.
A. I would know no further than what this would show, and would suppose warehouse would mean the building and the grounds it stood on.
208. Was there an account of that kind on the ledger?
A. I don't recollect.
209. Won't you examine and see? Here is the ledger, and see if there is an account called warehouse.
A. I don't find any account under the head warehouse.
210. Do you find any other account which purports to show the value of the real estate of George Ott?
A. I find an account of "store and fixtures?"

I now offer in evidence a letter of George Ott, dated Jan. 23rd, 1885, addressed to the South Branch Lumber Co., signed
133 George Ott (H.), to be marked Exhibit No. "17," and also a paper, dated Davenport, Iowa, Jan'y 23rd, 1885, headed "Statement of the financial standing of George Ott," and marked as Exhibit No. "18," a copy of each of which is to be made by the notary and marked as Exhibits Nos. "17" & "18," respectively, to be used in the same way as the original, also identified by the same Exhibits Nos. —.

Objected to as incompetent and immaterial as to any issue made in this case or any allegations made in the bill.

211. Please look at the papers now shown to you, consisting of a letter, dated Davenport, Iowa, April 8th, 1886, addressed to the South Branch Lumber Co., Chicago, Ill., signed George Ott (H.), and a statement pinned thereto, dated March 29th, 1886, and headed "Statement of George Ott," and state in whose handwriting these papers are.
A. They are in my handwriting.
212. Were they made at or about the time they bear date?
A. Yes, sir.
213. By whose direction did you make them?
A. By Mr. Ott's.
214. What was done with them when they were completed?
A. I enclosed it in an envelope and addressed it to the South Branch Lumber Co., Chicago, and mailed it.
215. From what source did you get the figures which are included in the statement?
A. From the books of George Ott and inventory of the stock in the warehouse and such figures as were given to me by Mr. Ott.

134 I now offer in evidence the said letter and statement, to be identified as exhibits, the letter as Exhibit No. "19" and the statement to the letter to be Exhibit No. "20," and to be copied by the notary, and copies to be attached to the deposition similarly marked as exhibits.

Objected to as incompetent and immaterial as relating to any issue in the case or any allegation made in the bill.

216. This letter was dated the 8th of April, 1886, and you will state if you know whether or not Mr. Francis Beidler, the sec'y of the South Branch Lumber Co., came to Davenport within a few days after the date of the letter; and, if so, about what time did he arrive here?

A. He came to Davenport some few days after the date of that letter. The first I saw him was on a Monday morning.

217. What time of the month was that?

A. If I had a calendar of 1886 I could tell. I judge from the calendar must have been April the 12th.

218. 1886?

A. 1886.

219. What, if anything, do you know about Mr. Beidler's refusing to make any extensions of the paper due to the South Branch Lumber —, or to come due, from George Ott on that trip?

Objected to as incompetent and immaterial, and the witness is requested to state only what he knows of his personal knowledge, not what he knows by hearsay.

A. All I can say is Mr. Ott told me in the morning Mr.
135 Beidler would grant no further time or extensions and hereafter would have to make extensions as to demand notes.

The answer is objected to as hearsay and incompetent.

220. State what, if anything, Mr. Ott said to you about that time or within a day or two thereafter, if anything, about discounting at the bank.

Objected to for the same reason as the last preceding interrogatory.

A. I don't recollect as he said anything to me about discounting at the bank.

221. State whether or not at any time before the 27th of April, 1886, you had any conversation with Mr. Ott or heard him make any statements as to what the bank would do about discounting or refusing to discount paper for him.

A. The information in regard to the bank not wishing to discount the papers to such an extent without being indorsed (accepted), the bank informed me and I informed Mr. Ott.

222. What did Mr. Ott say when you informed him of that?

Objected to for the same reason as the last two preceding interrogatories.

A. As near as I can recollect, his words were to the effect that he would look to see what could be done.

223. About when was it you told him what the bank had said to you fixing the date with reference to Mr. Beidler's visit here, whether it was before or after?

A. It was after Mr. Beidler's visit here.

136 224. About when?

A. It may have been probably ten days after; from seven to ten days after.

225. Do you know whether Mr. Ott owned or was interested in more than one stone quarry?

A. No, sir.

226. Do you mean by your answer that you don't know or he was not interested?

A. Not interested in more than one.

227. Where was that quarry situated?

A. About 15 miles west of Davenport.

228. In what is now called Montpelier?

A. Yes, sir.

229. Is the quarry in Muscatine or Scott county?

A. In Muscatine county.

230. Do you know when Mr. Ott or any one interested in that quarry last operated it?

A. I cannot state definitely when it was last operated unless I should be able to look it up and tell from the books.

231. Can you tell by looking at the ledger or other books when it was?

A. I might by looking at the ledger?

232. Won't you look at it now and form some reasonable estimate of the time?

A. I can't state definitely, because the year is not given on the credit side.

233. If you will look at the journal entry you can find the year, can't you?

A. Haven't got the journal that corresponds with this ledger here, neither the journal nor the day book. The debits are charged up between 1880 and 1882, and some credits; to which they would belong I can't tell. As near as I know, the last it was operated was in 1880.

137 234. Do you know anything about the amount of land that was included in that quarry?

A. As I understand it it was a lease of 147 acres.

235. Did you ever see the lease?

A. Yes, sir.

236. Do you know where it is now?

A. Not now.

237. Where was it the last time you saw it?

A. It was in the safe of Mr. Ott.

238. Please — how the goods of Mr. Ott were bought and sold with a reference to the payment of freights.

A. Manufactured goods were generally bought delivered here in Davenport.

239. The seller paying the freight?

A. Yes, sir.

240. How about other goods?

A. Most sales of car-load lots were made freight deducted to the Missouri river.

241. That is, Mr. Ott would pay the freight?

A. Yes, sir.

242. How was it on lumber shipments to Mr. Ott?

A. Lumber purchased in Chicago was generally free on board cars in Chicago.

243. You paid the freight from there here?

A. Yes, sir; some lumber from the North was shipped delivered free.

244. The seller paying the freight?

A. Yes, sir.

245. Did Mr. Ott sell any lumber to ship away?

A. No, sir.

246. Please look at the invoice from the H. W. Wright Lumber Co. to George Ott, dated March the 8th, 1886, found in the invoice book, marked Exhibit No. "11," and also look at the bill from George Ott to G. A. Hoagland, dated March 12th, 1886, on page 373 of the bill book, marked Exhibit No. "12," and state whether or not they cover the same goods.

138 A. Yes, sir; they do.

247. Now state whether the goods were shipped to Hoagland in the same car in which they were shipped to George Ott and without breaking bulk?

A. I think it was.

248. Don't you know from the entries in the books that it was so shipped?

Objected as leading and incompetent, and because the witness is asked to swear from his personal knowledge; the entries in the books show for themselves.

A. Yes, sir.

We now offer in evidence the particular invoice and bill referred to in interrogatories Nos 246 and 247, to be copied by the notary and attached as Exhibits Nos. "21" and "22."

249. State how the goods were sold to Hoagland in the bill of March 12th, 1886, with reference to the payment of freight.

A. I would have to refer to the books.

250. Well, do so.

A. The car was sold delivered to Omaha.

251. What was the freight?

A. $16.45.

252. Mr. Ott paid the freight upon it?

A. Yes, sir.

253. I now show you an invoice dated March the 10th, 1886, to George Ott from H. W. Wright Lumber Co., in invoice book Exhibit No. "11," and ask you the price at which they were bought, and who paid the freight on the goods; and also look at the bill from George Ott to G. A. Hoagland, March the 16th, 1886, in the bill book marked Exhibit No. "12," and state at what price these goods

139 were sold and — paid the freight thereon.

Objected to as incompetent and immaterial, and because it is an

attempt not to introduce the books, but to get into the testimony garbled extracts from them.

A. The bill from the Wright Lumber Co. March 10th was sold to Ott at 65 and 10 off the list prices, freight paid to Davenport; the bill March 16th, from George Ott to G. A. Hoagland, sold at 72 off from the list price; as to freight I refer to the ledger.

254. Please do so.

A. Freight was paid by Ott to Omaha, $13.00.

255. Please explain the meaning of the term 65 & 10 off.

A. The meaning of 65 & 10 off would show that the goods were bought at the net price of 31 and one-half one-hundredths on the dollar on the list price.

256. Explain about the list price. What is the list?

A. The list is the price adopted by all manufacturers as a standard to govern themselves by in making their sales.

257. These lists are printed?

A. Printed lists.

258. And when you say 65 per cent. off or any other per cent. you take off that per cent. first from the list price?

A. Yes, sir.

259. When you say any additional per cent.—as, for instance, 65 & 10 off—do you mean off from the remainder?

A. Off the remainder.

We now offer in evidence the specified invoice and bill re-
140 ferred to in interrogatory No. "253," to be copied by the notary and attached, marked as Exhibits Nos. "23" and "24" respectively.

260. You testified yesterday, in regard to a car-load of mouldings that was purchased by Ott from the Conly Lumber Co. and shipped by him to some party at Atchison, Kansas—Howell, Jewett & Co., Atchison, Kansas; will you please see if you can find the invoice and bill to cover these transactions?

A. I find the bill of George Ott to the Howell & Jewett Lumber Co., October 31st, 1885, page 107 in bill book, Ex. No. "12," consisting of a car-load of——

Object to the witness stating the contents of the book or reading evidence from it, because the book is the best evidence of what it contains.

A. And the invoice containing the bill to Ott from the Conly Lumber Co. is not here.

We offer in evidence the bill referred to by the witness in the last preceding answer, to be copied by the notary and marked Ex. No. "25."

261. Will you please produce the invoice book containing the invoice for the same goods?

A. Yes, sir.

262. State whether or not this bill shows the true price at which the goods were sold by Mr. Ott.

A. Yes, sir; it shows the true price.

263. Who paid the freight on that?

A. It is in my recollection that Ott had paid the freight on that.

264. State whether or not you have prepared a statement, as
141 requested yesterday afternoon, from the invoice and bill books of Geo. Ott, showing the prices at which doors, window-blinds, and mouldings were purchased by him, and also sold by him, from the 20th of Feb., 1886, to the 27th of April, 1886.

A. Yes, sir; I have prepared them.

265. You will produce them.

We now offer in evidence the statements referred to in the above interrogatory, to be marked as Ex. No. "13" and "14."

Objected to as incompetent and immaterial, because they are merely made up from the books of account, which are competent evidence in themselves, and not personal knowledge of the witness.

266. Please state how you would have to proceed in order to ascertain the amount of the accounts payable and the accounts receivable on the 23rd day of Jan., 1885, on Geo. Ott's books. There may be a way to find it by taking the items of trial balance Dec. 22nd, 1884, and following up all entries made since then from that time to the 23rd of Jan.?

A. Yes, sir.

267. In making a statement of the accounts receivable and accounts payable on the 23rd day of Jan., 1885, if one were seeking to ascertain these amounts at that date, how would it have been done?

A. If you mean if I was——

268. If any one, as a question of book-keeping, now?

A. I would take the trial balance as a basis, and that trial balance would have shown the debit and credit amounts of each account.

Object to one counsel putting leading questions and the
142 other one putting on an additional answer to the witness's.

269. I will ask you another question: What I want to know is the particular method which you would take to ascertain the total amount of accounts payable and the total amount of accounts receivable on the 23rd day of Jan., 1885, if on that day you had attempted to make that statement?

A. I would have taken a trial balance off the ledger which should have shown all accounts payable and all bills and accounts receivable.

270. How long would that take?

A. If the books were all posted up, it may require from one to two hours' time.

271. Do yon know, as a matter of fact, whether the ledger was posted up on the 23rd day of Jan., 1885; and, if not, how far behind was it?

A. That I don't recollect.

272. You say it could have been done in from one to two hours' time if the books were posted up?

A. Yes, sir.

273. State whether or not that could be done, if the ledger column were not footed, in an hour or two.

A. If the columns were not footed, I ain't able to state whether that could be done or not. Some may be more ready at figuring than I would be.

274. State whether or not you could have done it?

Objected to as incompetent and immaterial and indefinite; don't explain to what extent the witness would be required to foot the columns on the ledger. If to foot all of them it might take several days; if half of them it might take less days; too indefinite to put to a witness.

A. I can't tell whether I could have done it or not, not
143 knowing to what extent the figuring would have been.

275. State whether or not Mr. Ott made any request of you to ascertain the amount of accounts payable and accounts receivable at or about the time the statement of Jan. 22nd, 1885, was made to the South Branch Lumber Co.?

A. He did not.

That is all.

We now offer in evidence all the books of account of George Ott which have been identified, including the day book, invoice book, and the bill book, to be produced by witness. The books are now produced and identified and marked as Exhibits Nos. "27, 28, and 29" respectively.

Cross-examination by Mr. BILLS:

Cross-interrogatory 1. Mr. Heesch, did you ever keep books for anybody except Mr. Ott?

A. No, sir.

2. Did you ever do any book-keeping on any other set of books except his?

A. No, sir.

3. Do you call yourself a professional book-keeping expert?

A. No, sir.

4. Does Mr. Ott know anything about keeping books?

The question is objected to as immaterial and irrelevant and calling for the witness' conclusion.

A. I don't think he does to the full extent.

5. This statement of Jan'y 2d, 1885, was made by you
144 from figures furnished by Mr. Ott, as I understand you?

A. Yes, sir.

6. Were you present when he made these figures?

A. I was present when he started, and left for dinner before he finished them. When I returned from dinner he had them finished,

handed me his paper stating that he would draw it up in the manner of form and mail it to the South Branch Lumber Co.

7. Did you at that time pay any attention to these figures in order to determine whether they were correct or not?

A. No, sir.

8. Did you know at that time, as a matter of fact, that they were correct?

A. No, sir.

9. Can you state about how much Mr. Ott owed the South Branch Lumber Co. about the 23rd of Jan'y, 1885?

A. As near as I recollect, it was about $30,000.

10. Was that all bills payable?

A. All bills payable and open accounts.

11. What part of it do you think was bills payable?

A. Bills payable may have been from $25 to 27 thousand.

12. Did you know at the time you copied and sent this account that Mr. Ott didn't intend to include in it his indebtedness to the South Branch Lumber Co.?

Objected to as immaterial and irrelevant and calling for the witness's conclusion as to Mr. Ott, and not proper cross-examination.

A. I did not.

13. Was there anything said about it?

A. No, sir.

145 14. Bills payable here are put in at $36,798.69. Would that be about the amount of his bills payable if you deduct the 25 to twenty-seven thousand which he owed the South Branch Lumber Co.?

Objected to the question as immaterial and irrelevant and not proper cross-examination.

A. It would make it within about ten thousand dollars.

15. Are these other items—mortgage on factory, $10,000; mortgage on warehouse, $4,000, and on residence, $3,000—are these correct?

A. To my recollection, they were correct at that time.

16. He puts in his warehouse at $14,000. Do you know that it cost him over $16,000?

Objected to as not proper cross-examination.

A. I have no means of knowing of what it cost him.

17. He put in his factory, dry kiln, machinery, and grounds at $39,700. Do you know that that property cost over $70,000?

Objected to as not proper cross-examination.

A. No, sir; I did not know it.

18. Do you understand from your general knowledge of his business there?

Objected to as not proper cross-examination, and as immaterial and irrelevant.

A. I so understood it from Mr. Ott's view of the valuation.

The answer is objected to as not responsive and as hearsay.

146 19. You have been asked on direct examination to give certain items of payments of debts of Mr. Ott from the 20th of April to the time of the assignment. You may state whether or not there was any material change as to the manner in which Mr. Ott conducted his business, paid his debts, etc., during those days, from the 20th of April to the time of the assignment.

Objected to as calling for conclusions of which the books are the best evidence.

A. No; there was no material difference.

20. State whether or not the 26th of April, 1886, was the regular day of the week on which he usually paid your help at the mill.

A. Yes, sir; all hands employed at the mill warehouse were generally paid on Monday, and the 26th of April was a Monday.

21. You may state whether or not you have made out a statement from the books of account of Geo. Ott showing the amount of payments made upon his indebtedness from the 20th day of Feb., inclusive, to the time of his assignment, the 27th of April, 1886; if yes, you will please give the same to the notary that a copy may be attached to this your deposition, and you may state the sum total of such payments.

Objected to as not proper cross-examination and because it is not shown to be made up from the books of account in evidence.

A. Yes; I did.

147 The witness here produces said copy to the notary, to be copied and attached as Ex. No. "26."

Objected to as improper method of attempting to make a defense.

A. I produce the said statement, showing that the total amount of payments made between the two dates amounted to $61,326.13.

22. State whether or not the amount or amounts which Mr. Ott paid upon his indebtedness between the 20th of Feb., 1886, inclusive, and the 27th of April, 1886, was about as it would average for, say, two years before that time.

Objected to as not proper cross-examination, asking for conclusions without giving basis upon which it is found.

A. Yes, sir; it would average about the same proportion.

23. State whether or not you have made a statement from the books of account of Mr. Ott, showing the amount of his purchases from the South Branch Lumber Co. between the 20th day of Feb., 1886, inclusive, and the 27th of April, 1886. If yes, will you please furnish the same to the notary that a copy may be attached to this your deposition, and please state the totals of these two amounts.

Objected to as not proper cross-examination, asking for conclusion without giving the basis from which it is made up, seeking to introduce affirmative evidence under cross-examination.

A. This statement has been made by Charles Meyer, deceased, and taken from the books of George Ott.

148 24. Will you please at the first opportunity examine the books in connection with such statement and learn whether or not it is a correct statement?

A. Yes, sir.

25. Will you please state whether or not you have made an examination of Mr. Ott's books of account to find out the amount of his purchases from the South — Lumber Co.; if yes, will you please state the result?

Objected to as vague, not giving the time in which it occurred, and not proper cross-examination.

A. Yes, sir; I have, and I find that the total purchases by Mr. Ott from the South Branch Lumber Co. have been $180,804.40.

26. You may state the dates between which these purchases were made.

Objected to for the same reason as the last preceding cross-interrogatory.

A. These purchases were made between the years 1880 up to the date of the assignment, April 27th, 1886.

27. Will you get the date when he made his first purchase of them?

A. His first purchase was in the fall of 1881.

28. And the last purchase?

A. This does not show the date of the last purchase. My recollection is the first purchase was some time in March.

29. 1886?

A. 1886.

30. You may state, if you know, or so far as you know, was there anything in connection with Mr. Ott's business which led up

149 to and caused his assignment on the 27th of April, 1886. State what it was.

Objected to as not cross-examination and calling for conclusion.

A. The reason that led to Mr. Ott's assignment, as I understand it, was the refusal of the South Branch Lumber Co. preventing any renewals on paper, and the banks refused to discount such an extent of unaccepted papers.

31. State whether or not at that time, about that time, there was any trouble about selling goods on account of the strikes, the Southwest strike, at St. Louis and other places.

Objected to for the same reason as the last preceding interrogatory.

A. Yes, sir; trade was very dull and backward; almost impossible to sell goods at any price. There was a general stagnation of business all through the country.

32. Can you state about what the amount of paper the First Na-

tional Bank of Davenport had discounted for Mr. Ott and held at that time?

A. They held at that time about $11,000 of papers discounted, which were not accepted, besides other papers that had been previously discounted and accepted which may not have matured.

33. About how much altogether?

Objected to as not cross-examination and immaterial.

A. That I cannot state definitely; I have not made a memorandum of it.

34. Do you mean to be understood as testifying that the bank
150 refused to discount any more paper at that time, or they simply said they would prefer not to increase the amount of paper?

Objected to as being indefinite; at that time does not give any idea when.

A. They told me in words to this effect, that they would not discount any such extent of papers before being accepted, and advised me to try and get the papers accepted before they discounted them.

35. As a matter of fact, did the bank keep right on discounting Mr. Ott's paper down to the 27th of April?

A. Yes, sir.

Objected to for the same reason as the last preceding cross-interrogatory.

36. Was it not a fact that at that time, just before the assignment, and for a long time before that, that the bank had been carrying drafts, discounting drafts, and other paper of Mr. Ott's to the amount of from $70 to 80 thousand dollars?

Objected to for the same reason as the last two preceding cross-interrogatories.

A. I cannot state as a fact the exact amount, but I knew they were carrying large amounts of paper.

37. Would that be about the amount, to the best of your judgment?

A. To the best of my judgment the figures would range between forty and sixty thousand dollars.

38. When Mr. Ott sold a bill of goods he would draw a draft on the purchaser for 30, 60, or 90 days, whatever time he sold
151 on, and either before or after the draft was accepted would have it discounted at the bank, would he not? Was that the way he did his business?

A. Yes, sir.

39. The draft would be taken to the bank and discounted by them before it was accepted, and then sent out by them through their bank to the party to be accepted. When Mr. Ott paid some money to Chris. Moeller and some to T. McClelland just before his assignment did he pay them in that way, by drafts on his customers who owed them?

A. Yes, sir.

40. You testified that he paid Chris. Moeller at that time $1,239.46. You may state, if you are able to, how much he still owed Chris. Moeller after making that payment.

A. He still owed Chris. Moeller between six and eight thousand dollars.

41. Did he owe him that at the time of the assignment?

A. Yes, sir.

42. Did Chris. Moeller have any security for any of it?

A. No, sir.

43. Do you know that Chris. Moeller had been urging Ott to pay him for some time before the assignment?

A. Yes, sir.

44. Had McClelland been urging Mr. Ott for some money for some time before that?

A. Not that I am personally aware of.

45. At the time Mr. Ott made his assignment and for several years before that with what bank had he done his business in Davenport?

152 A. At the time of his assignment and several years before he had done his business with the First National Bank of Davenport.

46. State whether or not he had any money on deposit at that bank at the time he made the assignment; and, if he has, how much?

A. Yes, sir; at the time the assignment was made the amount was something like balance in bank at date of assignment, $517.65.

47. Did that pass to the assignee at that time?

A. $400 passed to the assignee and the balance was attached by the bank.

48. Appropriated by the bank, you mean?

A. Yes, sir.

49. Did you keep the cash drawer during the time you kept the books there; have charge of the cash in the cash drawer, and make the deposits in the bank?

A. Yes, sir.

50. Did you do that between the 20th of Feb. and the 27th of April, 1886?

A. Yes, sir.

51. I will ask you whether or not during that time you deposited the money that was received from Mr. Ott's business the same as you had done for some years before.

A. Yes, sir.

52. State whether or not Mr. Ott stole any of it out—misappropriated it in any way—to your knowledge, during that time?

A. No; not to my knowledge.

53. Could he have taken any large amount out of the business there during that time without your knowing it?

A. I think not.

54. State whether or not there was anything in connection with his business during that time which indicated to you that he was

trying to conceal his money or property in any way from his
153 creditors or to appropriate it so that they could not get it.

Objected to as not cross-examination, not calling for facts, asking for guess and conclusions of the witness.

A. There was none.

Adjourned till 2 o'clock p. m., March 26th, 1887.

55. When did you start this book called the trial balance?

A. I will have to refer to the book. June 27th, 1878.

56. Did Mr. Ott ever have anything to do with the keeping of that book?

A. No, sir.

57. Did you ever show him the book or the entries in it or call his attention to it in any way?

A. No, sir.

58. Do you understand as a book-keeper that you cannot make a trial balance unless you take an inventory of the property?

A. I cannot make a complete trial balance unless I take an inventory of the stock.

59. Do you know of any reason why Mr. Ott did not have an inventory taken of his property from year to year at any time?

A. Why he did not take an inventory of the stock was because there wasn't ample time to take it completely.

60. How is it about stock going out and coming in all the time; how is it about that? Was there a good deal of it coming and going all the time?

A. Yes, sir; it required most of my attention to keep track of the stock going out. My duty was to see that all orders were attended to and shipped as promptly as possible, at the same time keeping track of goods being unloaded to see that they would tally up with the invoice.

154 61. Were you kept very busy?

A. Yes, sir.

62. Can you tell about the amount of business Mr. Ott did any year there—about what would be his sales?

A. The sales within the last year would amount to probably $300,000.

63. How many men did he employ in his manufacturing business there—about how many men?

A. About 135 men were employed altogether in the factory and in the warehouse.

64. At the time this statement was sent to the plaintiffs, January 23rd, 1885, did you call Mr. Ott's attention to this trial-balance book in connection with that statement at all?

A. No, sir.

65. Did he look at it, to your knowledge?

A. No, sir.

66. As far as you know, did he know what you had in that book?

A. So far as I know he did not know what I had in there.

67. In examining the ledger, as he examined it at that time, would he find any ledger account, say, with South Branch Lumber Co. which would show the balance which he owed them?

A. He would not find it condensed. He would find part as an open account, and the other he would have to take out of the bills-payable account.

68. Would that be the case with all of your customers from whom you bought goods?

A. Yes, sir.

69. When did you say Mr. Beidler was here? How long before the assignment was it that Mr. Beidler was here?

A. He was here on April 12th, 1886.

155 70. Did he look over the books at that time?

A. Yes, sir.

71. Who showed him the account books of Mr. Ott at that time?

A. I handed him the books such as he requested, and any information he desired I gave him.

72. Had Mr. Beidler ever been there before, at the office?

A. Yes, sir; he had been there before.

73. Can you tell about when?

A. I don't recollect just when it was he was here. If I recollect, he said he had been out West looking after his Western yards; on his way back thought he would stop over and give us a call.

74. Was he in the office?

A. Yes, sir.

75. Was Mr. Ott there?

A. Yes, sir.

76. Was there any talk then about the business, about Mr. Ott's standing?

A. Not that I can remember.

77. Did Mr. Beidler look over the books at that time?

A. No, sir.

78. Do you mean to be understood that Mr. Ott told you just before he made the assignment to get Mr. Reipe's bill, or that you merely told Mr. Reipe that he might bring it in?

A. I think I understood Mr. Ott to say that I should get his bill.

79. Was there a bill on each side?

A. Yes, sir.

80. A balance had to be struck?

A. Yes, sir.

81. How much of an amount did you owe Reipe after taking out your bill—do you recollect?

A. I could tell by the book. We paid Reipe a balance of $15.16.

82. What does Reipe do? What is his business?

156 A. He has a drug store.

83. How long had George Ott, Jr., worked for his father?

A. He has been with his father ever since I was in the employ of Mr. Ott.

84. What has he been doing for the last few years?

A. He has been travelling for Mr. Ott as salesman, also making

purchases occasionally, and at the same time had the contract to do the glazing.

85. He had a contract with his father to do the glazing?

A. Yes, sir.

86. Did he do that work or have it done?

A. Yes, sir; when at home he gave it his full attention, and when away he had a man there to attend to it.

87. Did he hire the hands himself and do the work?

A. Yes, sir.

88. How much did he get for that?

Object to any evidence of any contract unless the witness shows whether it is verbal or written, and if verbal his knowledge in regard to it, and not proper cross-examination.

A. His contracts varied at different times.

89. Did he do anything more than the work, the labor of glazing? Did he furnish the glass or putty or anything of that kind?

A. He merely furnished the labor.

90. Did he do it for so much apiece?

A. It was for a certain amount per window.

91. I suppose the book will show whatever compensation he got for the work?

A. Yes, sir; full and complete.

92. You say George and Henry Goettsch were brothers-in-
157 law of Mr. Ott?

A. Yes, sir.

93. How long had they worked for him?

A. As far as my recollection will allow, between four and five years.

94. How old is this George Goettsch?

A. I can't say how old he is.

95. About how old?

A. Maybe about 20.

96. A minor, is he?

A. I am not positive of that.

97. What did he do; what work?

A. He was employed at the factory.

98. Did Mr. George Ott make any arrangements with him to pay him any of the wages and keep back part of the wages as savings for the boy?

A. So Mr. Ott told me.

99. Was there anything on the books to show what he actually was to have and what part Mr. Ott kept back for him?

A. No, sir; not on the books until it was entered, when Mr. Ott handed me the amount of the same.

100. At the time it was paid, do you mean?

A. At the time the balance was placed to his credit.

101. Do you recollect when that was placed to his credit?

A. A credit is placed to George Goettsch April the 5th.

102. When was it actually paid to him?

A. It was paid to him April the 21st.

103. Did you pay it?

A. I drew a check for it, but I can't say whether I handed it to George Goettsch himself or whether to Mr. Ott to give to him.

104. There were three cars of glass on the track of the Milwaukee road here at the time of the assignment, or four cars, which was it?

158 A. There were virtually five cars, four car-loads, consisting of four car-loads billed.

105. Three cars of the Cunningham glass and one car of the Washington glass works?

A. Yes, sir.

106. Did you at that time know anything about the arrangement which Mr. Ott had with the Milwaukee railroad that he might take away freight without paying the transportation charges on it, but should leave enough property which they had transported in their hands all the time to make them secure for this freight money; did you know anything about that?

Objected to as not proper cross-examination and immaterial.

A. What I remember, McRaith, the agent, was in the office one morning asking for the amount of freight due. Mr. Ott agreed to pay him all he could by his next report day, and remarked that he needn't be afraid for the balance, because there is sufficient goods on the track at that time to more than pay for what is due them.

107. Do you remember about when that was?

A. That was within two or three months from the date of the assignment.

108. Well, did you have goods on their side track there in that way from that time to the time of the assignment?

Object to the question as immaterial and not proper cross-examination, and calling for the witness' conclusion.

A. Yes, sir.

109. Do you know whether or not after the assignment
159 was made Mr. White insisted that Mr. Meyer, the assignee, should take these goods out of their possession and pay the freight that was due them; do you know about that?

Objected to as not calling for the conversation—calling for the conclusion instead—and also as not proper cross-examination and immaterial.

A. Mr. Meyer, after being appointed assignee, when I discovered that the cars were not there, he, I suppose, made inquiries as to the reason, and came back and informed me he had to pay the whole amount of freight or he could not get the goods.

Statements by the assignee to the witness are objected to.

110. Do you know whether he did pay the freight to the railroad company that was due them?

A. There was a check drawn for the amount of the freight, and I

was requested to charge it up as being paid, as all freight due on these cars and other freights still unpaid.

11-. After the assignment did you remain in the employ of the assignee as book-keeper? If yes, for how long a time?

A. Yes, sir; I remained in his employ about 6 and a half months.

112. Was it the check of Mr. Meyer, assignee, that was given to the railroad Co. to pay the freight?

A. Yes, sir.

113. This glass that was bought by Mr. Ott from parties like Cunningham—was that delivered on the track at Pittsburgh? Did you pay the freight on it here?

160 A. I would have to look at the book to see whether it was bought delivered in Chicago or Davenport. The goods were bought freight deducted to Chicago.

114. I suppose, then, when the glass was delivered to the railroad Co. Mr. Cunningham would have the right to draw on Mr. Ott for it, wouldn't he?

A. Yes, sir; 90 days' acceptance.

115. You were inquired about as to a payment which Mr. Ott made of one hundred and some odd dollars interest on mortgage on his homestead? How much was that mortgage on his homestead?

Objected to as immaterial.

A. I have never seen the mortgage or note, but I understand it was three thousand dollars.

116. Was the interest payable every six months, if you know?

Objected to, as the note and mortgage are the best evidence.

A. I do not know.

117. Was it six months' interest that you paid at that time or more—at the time the gentleman on the other side inquired about it?

Objected to, unless the witness knows the fact.

A. I understood the interest was at the rate of 7 per cent. That would be $210 annually.

118. So $105 would be semi-annually. *It* is it also a fact within your knowledge that that mortgage was due and payable on the homestead at that time, and if Mr. Ott wanted to steal some

161 money from his creditors he could have paid it all off?

Objected to as calling for conclusions and inference of the witness and not cross-examination.

A. Not in my knowledge.

119. You don't know whether it was due or not?

A. No, sir.

120. To the best of your knowledge, did Mr. Ott purchase between the 20th of Feb., 1886, and the 27th of April, 1886, about the usual amount of goods, merchandise, as compared with the same time previous to that?

Objected to as not proper cross-examination, calling for the witness' conclusions.

A. He bought about the same amount as was customary to buy.

122. Did you observe or discover any disposition on the part of Mr. Ott during that time to increase his indebtedness in any way?

Objected to for the same reason as the preceding interrogatory and as immaterial.

A. No, sir.

122. Did Mr. Ott sell his goods by retail or in what may be called by jobbing lots?

A. He sold his goods principally in job lots—wholesale lots.

123. About what would be the amount of his ordinary bills which he would sell to those parties who bought job lots?

A. From one to ten car-loads.

124. Where he sold several car-loads to a man, of what would this car-load of goods generally consist—how many kinds of
162 goods; what were they?

A. They generally consisted of an assortment—windows, doors, blinds, mouldings.

125. Were there some of your goods manufactured by Mr. Ott and some goods that he bought from other parties?

A. Yes, sir.

126. In making sales in such job lots would it frequently occur that you might actually lose something on certain articles but make enough on other articles to make a fair profit on the lot?

A. Yes, sir; that would occur. One item may be somewhat at a loss; another item had sufficient profit to make a fair margin on the whole.

128. State whether or not there was, for some time previous to Mr. Ott's assignment, a general decline on the goods which he dealt in; if yes, for how long a time was it that decline was taking place?

A. Goods in our line of business were on a decline the last three years. Up to the time of the assignment there was occasionally an effort made to advance prices by the manufacturers holding meetings and trying to compromise matters, but it never held good.

129. Did it frequently happen that Mr. Ott had contracted to supply certain goods in his line some time before he actually purchased the goods or manufactured them to fill the order?

A. Yes. sir.

130. Did it also frequently happen that he contracted for goods at certain prices some time before he actually sold them?

A. Yes, sir.

131. What kind of goods did Mr. Ott manufacture at his
163 place here in Davenport?

A. The principal manufacture consisted of sash, doors, blinds, mouldings, scroll-work, and other work generally used for inside finish of buildings.

132. You have been inquired of as to certain goods which Mr.

Ott bought from the Conly Lumber Co., upon which it is claimed that he lost money. I will ask you if you remember about that same time he bought 30,000 doors from the Conly Lumber Co., upon which he made about $20 apiece?

The question is objected to as assuming that which does not appear as having been inquired of, as irrelevant, and for the further reason it is asking for conclusions without giving references or data from which he draws them.

A. I remember of Mr. Ott buying doors from the Conly Lumber Co. which we purchased very favorably. Whether it was at that same time I cannot recollect; would have to refer to the bills and books to see what the date was.

133. What would a car-load of windows and doors—sash and doors—be worth generally?

A. A car-load averaged between $600 and $1,000.

134. I ask you whether or not during the time you were working for Mr. Ott there, attending to the books, the price at which he sold windows and doors didn't go down about one-half.

A. Yes, sir.

135. Did it cost Mr. Ott or anybody else, to your knowledge, any less to make them than when they were worth as much again?

A. No; it didn't.

136. Did any one else from the South Branch Lumber Co.
164 except Mr. Beidler ever come to the office of Mr. Ott, where you were, or about the premises, to your knowledge?

A. Yes, sir; there was a young gentleman there at one time representing — to be salesman.

137. You remember about when it was?

A. It may have been in the summer of 1885.

138. You were inquired of about some goods which Mr. Ott bought in Chicago, I think, and had shipped to Mr. Hoagland, of Omaha, about the 12th of March, 1886. Do you know whether these goods were a part of a job lot sold to Mr. Hoagland at that time?

A. Yes, sir; they were.

139. How much business did you do with Mr. Hoagland?

A. Had quite an extensive business with them. There was a contract of ten cars at one time, and there may have been a few smaller contracts—from two to five cars.

140. Your attention was called to the bill of some goods, March 10th, 1886, and March 16th, 1886, which were put in evidence. Can you tell when these goods were bought, the date when they were bought and the date when they were sold, by reference to your books or otherwise; the date when the purchase was contracted for and the date when the sale was contracted for?

A. The sale to Hoagland had been made some time before. He was, if I recollect right, he was urging the shipment of the goods. Mr. Ott not having the facilities to supply them promptly enough, he looked about to try and procure the goods to fill the order.

By Mr. SMITH: This sale was a contract in writing, was it?
165 A. Yes, sir.

By Mr. BILLS:

141. Were these goods part of your contract with Hoagland?

A. Yes, sir.

142. Mr. Hoagland, you say, was hurrying Ott up for these goods, and he didn't have the goods himself; so he procured them. If he hurried by letter the letter is the best evidence.

Statements of contents of contracts objected to, because it is confessed to be in writing.

143. You mean this contract was by letters written—not a separate written contract, written out and sent by the parties?

A. Simply by correspondence.

144. These sales were made by George Ott, Jr.?

A. Yes, sir.

145. How were they made by him? Did he make them and report them to you?

A. Took them in writing from Hoagland.

146. Took them — order?

A. Yes, sir.

147. You filled these orders at that time?

A. Yes, sir.

148. What did you do with these orders?

A. Filed them away with other papers in Mr. Ott's possession.

Objected to, and will move to exclude all evidence relating to the terms of the contract with Mr. Hoagland or the contents of the order, because the orders themselves are the best evidence.

149. Who was it from whom these goods were bought?

A. From the Wright Lumber Co.

166 150. State whether or not these goods which were bought from Merrill, Wisconsin, sent to Mr. Hoagland, were to fill part of an order which Mr. Hoagland had given to Mr. Ott for goods.

A. Yes, sir; they were.

151. You were in the office and attending to business at the time of the assignment of Mr. Ott, were you not?

A. Yes, sir.

152. You may state whether or not, if you know, Mr. Meyer took possession of all the property of Mr. Ott except his homestead immediately after the assignment was executed.

A. Yes, sir; Mr. Meyer took possession immediately after. Mr. Meyer took possession April 27th, 1886.

153. Did Mr. Meyer receive those four car-loads of glass from the railroad Co.?

A. Yes, sir.

Objected to as immaterial.

A. The railroad Co. delivered it to him on the lot next to their track, and we hauled it to the plow Co. shop.

154. State whether or not Mr. Meyer, the assignee, sold the glass and received the proceeds as assignee.

Objected to as immaterial.

A. Yes, sir; sold the glass and received the proceeds of the sale.

155. This property that was covered by the mortgage which Mr. Ott made to Addie Kloppenberg and the mortgage he made to Charles Hill—what was done with that property?

Objected to as not cross-examination.

156. The property was sold the same as other things.

157. Sold by Mr. Meyer, the assignee; and did he re-
167 ceive the proceeds?

A. Yes, sir; sold by Mr. Meyer and he received the proceeds therefor.

I believe that is all I want to ask him now.

DAVENPORT, IOWA, *March 26th*—p. m., 1887.

Redirect examination by Mr. COOK:

Redirect interrogatory 1. You say you do not think Mr. Ott knew about book-keeping to the full extent. I will ask you whether you opened these books or made the entries in them at the outset under Mr. Ott's direction?

A. No, sir; I opened them books under my own supervision and made all entries under my own supervision.

2. You never had any experience in book-keeping before that?

A. Some experience; knew how to do common book-keeping.

3. Where did you learn?

A. While in Mr. Ott's employ I took a course in book-keeping from Mr. Godwin, book-keeper for Beiderbecke & Miller. That was in 1875. Then, in November, 1876, Mr. Ott's book-keeper had quit, left them, and Mr. Ott, knowing I had taken a course in, studied book-keeping, he thought I would be competent to take the position, and, while taking hold of the position, at the same time, in the evening, I went to the business college; such matters as I was not fully posted in I tried to study up there in the evening.

4 Did Mr. Ott ever talk with you about the books and the condition of the business?

A. No, sir.

168 5. Never at any time while you were with him?

A. No, sir.

6. Well, did he from time to time make inquiries as to the balance in the bank and what amount you were owing and the amount that was owing to you?

A. No, sir; if I would find matters were not going just right I would call his attention to it.

7. You used to confer with him about the situation of the business when you thought it was necessary?

A. Yes, sir.

8. What did Mr. Ott do in connection with the business and the management of it?

A. A wide scope.

9. Give us a general answer, if you can.

A. He looked after matters in general, to see that everything was in good running condition, and, when required for any information, of course he would be consulted.

10. Did you usually keep your books posted up pretty closely?

A. No, sir; not at all times.

11. On the average, how far — would you be in the posting of your ledger?

A. Behind at times as much as a month.

12. Was that usually the customary average?

A. May average from one to two weeks.

13. Did Mr. Ott ever consult the books—examine them for himself?

A. No, sir.

14. Did you ever see him examine them?

A. No, sir.

15. Ever see him examine the cash book?

A. No, sir.

16. Ever see him examine the accounts of either his debtors or his creditors?

A. No, sir.

169 17. When you would make a balance sheet, did he ever examine that?

A. No, sir.

18. Never made any examination of it?

A. No, sir; not to my knowledge.

19. Did you ever tell him with any sort of detail as to the situation of the accounts payable or receivable—the amount of them?

A. No, sir.

20. Then did Mr. Ott, so far as you know, have any knowledge whatever in regard to the condition of his business; and, if so, how did he obtain it, as far as you know?

A. I don't think he had any knowledge as to the true state of his business.

21. How was it at the time you went in there as book-keeper?

A. I continued the books as I found them.

22. Did he give you any instructions then about the character of the business or its condition?

A. No, sir.

23. Did he refer you to the former book-keeper?

A. The former book-keeper was with him a short time; merely showed me how to make the entries.

24. Now I understand you to say when this statement of Jan. 23rd, 1885, was made up that you got the figures from Mr. Ott, and that he then examined the books and did not call on you for any information in regard to it; is that correct?

A. —.

Objected to; assumes that witness has said Mr. Ott examined the books. Mr. Ott looked over the ledger; not that he examined the books.

25. Do you know what books he examined?

A. The ledger.

170 26. Was the ledger then footed up to date? Were the bills-payable account and accounts payable accurate as far as it was posted up?

A. Yes, sir.

27. You know how long Mr. Ott was engaged in his examination of this book at that time?

A. I could not say. He got the book from me a little before twelve at noon. Shortly after twelve I asked him whether he was going to stay; if so, I would go to dinner. When I came back, one or a little after, he handed me the paper.

28. Do you know whether any footings were made on the ledger of various accounts?

A. Not that I know of.

29. Do you know whether he got the balance book containing the last trial balance sheet?

A. He could not, I don't think, for the book was in a drawer had had only one key, and I had the key in my pocket.

30. State whether any other time except this you ever saw Mr. Ott examine the books?

A. Not that I recollect of.

31. Did you examine that statement when he handed it to you, or the figures? Did you give any particular attention to it?

A. No, sir.

32. What, if anything, did you say to Mr. Ott in regard to the amount of bills payable put down in that statement as to its being correct?

A. I didn't say anything to him.

33. From your knowledge of the business at that time you may state whether or not you know that the bills payable of Mr. Ott at that time actually exceeded $60,000 or more than that.

171 A. If I would have stopped to give that matter consideration I would have known that it exceeded the amount on the statement.

34. The question I asked you was in substance whether or not you did not know that the bills payable at that time exceeded $60,000?

A. I did not stop to figure up whether it was that or more or less.

35. You had charge, looking after the payment or renewal or extension of these bills payable, did you not?

A. Yes, sir.

36. Did you keep in a general way a knowledge of about the volume of bills payable from time to time?

A. I kept account of them from month to month. The book had such items that would come down from one month to the other.

37. You had made up a balance sheet on the 22nd of Dec., 1884, had you not?

A. Yes, sir.

38. And this statement was made Jan. 23rd, 1885. Do you know whether or not you had paid any considerable portion of bills pay-

able between these dates—whether or not you had reduced the total amount?

A. We had paid no more than the general average.

39. And what would that be, monthly?

A. The monthly bills payable as they would come due would vary—some fifteen, some twenty thousand, some twenty-five. What they were at that time I could not say until I referred to the book.

40. Now, bills payable at the same time were being made?

172 A. Yes, sir.

41. You may state whether or not, if you had been asked for the amount to ascertain the bills payable on Jan. 23rd, 1885, do you know how long it would have taken you to have done so from the ledger?

Objected to — not proper re-examination and because the witness was fully interrogated on his direct examination.

A. If I had been asked to do that it might have taken me very near two hours.

42. Have you made up a memorandum or statement showing the amounts of goods received by Mr. Ott from the 20th of February, 1886, to the 27th of April, 1886?

A. I have made up a statement showing the amounts of the various bills received between the 20th of Feb. and the 27th of April, which includes the four car-loads of glass, making a total amount of $60,676.10.

43. I understand you to state in your cross-examination that the amount paid by Mr Ott from the 20th of Feb. to the 27th of April, 1886, averaged the same proportion. What did you mean by that term? I did not quite understand what the answer meant.

A. It would be about the same as he paid within the same period of time any time previous to that.

44. Do you mean that the payments were the same as they would be for the corresponding months of previous years?

A. Previous years might not have been such extensive business, but within the last year, say.

173 45. Did Mr. Ott have a pretty heavy stock on hand about the middle of Feb., 1886?

A. Yes, sir; he had a good stock on hand.

46. How was it as to being well assorted—a good supply of different kinds of goods, as doors and windows, etc.?

A. The assortment was not, as — general thing, complete, there being certain qualities of doors and other articles that were in greater demand than taking the goods in a whole.

47. Was the volume of Mr. Ott's business during the year 1885 and the first three months of 1886 as much as it would be in 1884 for the same length of time?

A. I cannot say; I'd have to refer to the books. Estimating in a general way, without looking at the books, I should judge no larger in 1885 than in 1884, to any great extent.

48. Was it larger?

A. I think it was.

49. Had there been a declining market through most of 1885?

A. Yes, sir.

50. You say trade was very dull and backward, almost impossible to make sales, in the early part of 1886 from Feb. 20th to April 27th, 1886; is that correct?

A. Yes, sir.

51. Do you — whether from the 20th of Feb. up to the 27th of April, 1886, there had been a general decline in the prices of all kinds of goods such as Mr. Ott carried?

A. No; the decline had taken place up to that time.

52. Was there an advance after the 20th of Feb.?

A. If I remember right, the manufacturers were trying to hold goods at better prices, but unable to make ready sales.

174 53. Now, during the months of Feb., after the 20th, and March and April, up to the time of the assignment, had trade revived any?

A. If I remember right, the strikes took place between that time, and that stopped trade almost entirely.

54. For how long during that period?

A. May have been, I guess, from one to two months.

55. Was there an advance in doors from December, 1885, up to April, 1886?

A. Yes, sir.

56. Considerable advance?

A. No, sir; not — any great extent.

57. You say that the bank told you in the month of April, 1886, that they did not want to discount any on accepted drafts, as they had been doing, nevertheless they did continue to discount as they had done before, as I understand you; is that correct?

A. Yes, sir.

58. Did they do it to the same extent?

A. It may not have been quite to the full extent that they had been doing. They understood we were going to try and fix matters so we could hand them accepted drafts. That was what I had said I would try and do or see whether it could be done.

59. Then, if the bank did not stop discounting the draft, what was the particular thing that brought about the failure at that particular time, April 26th or 27th, 1886?

A. That is something I do not know—what was the reason Mr. Ott did not inform me to that effect.

60. How long before April 27th, 1886, had you commenced
175 this course of business with banks in giving them to discount your drafts before they were accepted or immediately on shipment?

A. It was customary to take the drafts to the bank in that shape ever since I had charge of the books.

61. Had it been the custom as soon as you shipped to take the draft to the bank?

A. When we required funds to make payments.

62. Now, for three or four months prior to the time of the assign-

ment, state whether or not you took drafts there as soon as the shipments were made.

A. It has been customary to take drafts there as funds are required. We would take drafts there sometimes a few days after shipment, or a week or ten days.

63. It had been customary to take to the bank for discount drafts for shipments which had been made immediately after the shipments had been made?

A. You mean the next day or a day or two after. It was not customary to take — within a day or two. Drafts were taken within a week or ten days after shipments were made.

64. Did you ever take them to the bank for discount before you received letters of advice from your customers that the goods had been received?

A. Yes, sir.

65. Had that been customary prior to Dec., 1885; and, if so, for how long a time?

A. To the best of my recollection that had been customary from six to nine months before the assignment was made.

66. Prior to that what had been the custom about the drafts discounted?

A. Prior to that it was customary to get the draft dis-
176 counted, send it out to the party for acceptance; if not right — generally returned.

67. Do you mean that the discount was not in fact made until the bank had received advice from the parties?

A. They discounted the draft here as it was presented to them and sent it out to the parties for acceptance, and in case they failed to accept the draft would be returned for us to demand it again.

68. Prior to the six or nine months before the assignment?

A. Yes, sir.

69. What was the custom after that time—the six or nine months before the assignment?

A. Then I requested them to hold the drafts at the bank until I would have reports from the parties, to see whether the goods had arrived satisfactorily or not, and then, when I felt satisfied that they were ready to accept the drafts, ask them to forward them for acceptance.

70. The difference was that prior to the six or nine months before the failure you would discount the drafts and if they were not accepted the bank would return them to you, but after that time, this six or nine months before the failure, the bank would hold the drafts without returning them to you until you had opportunity to adjust the matter with the consignee?

A. That is it; it was annoying to the bank to send the drafts out and have them returned, so we suggested that they leave them lying there until we hear from the parties, and then send them out to have them accepted.

71. You may state whether or not during all of the year
177 1886, up to the time of the failure, it was customary for you to draw drafts against the shipments that were made and get

them discounted at the bank within about two days after the cars had left here?

A. That may have been the case with some of them, not with all of them.

72. To what extent, what proportion, was that done?

A. The greater part were not discounted until a week or ten days after the shipments were made.

73. I understood you to say a complete trial balance could not be made without an inventory was taken; was that correct?

A. That was my understanding of it.

74. Is it not a fact that you can make a complete trial balance, but that you cannot ascertain from the trial balance the condition of the business without an inventory being taken?

A. That is what I mean.

75. A trial balance will show correctly all the items or debits and credits that are upon the ledger without reference to any question of an inventory?

A. What I thought you referred to was to know as to the assets and liabilities. Of course you can take a trial balance merely to show whether you have been keeping books correctly.

76. How many salesmen did Mr. Ott employ in the years 1886 and 1886?

A. He employed one.

77. Who was that?

A. His son, George Ott, Jr.

78. During all that time?

A. Yes, sir.

79. The only salesman employed?

A. Yes, sir.

80. Did he sell the bulk of all the goods that were sold—make the contracts for them?

A. Yes, sir.

81. Did you get many mail orders directly from the parties without going through a travelling agent?

178 A. Yes, sir; we got mail orders and also orders that Mr. Ott would sell.

82. Did Mr. Ott himself travel some in the business?

A. He would go to Chicago to look after the lumber and try and sell some goods.

83. In what way generally was the bulk of all the goods sold during 1885 and 1886?

A. The bulk was sold by his son George Ott, Jr.

84. Have you any way of fixing when it was Mr. Beidler stopped here the first time? You say he did not examine the books.

A. I cannot recollect just now when it may have been.

85. Can't you tell whether it was within three months, six months, or a year after the failure?

A. I ain't prepared to say. I have got to call to recollection some instance that would call to my mind when it was.

86. Do you know what season of the year, whether it was in summer or winter?

A. I can't call to memory now when it was.

87. Was it before or after the statement of Jan. 23rd, 1885, had been forwarded to the South Branch Lumber Co.?

A. I don't recollect.

88. What did you know in regard to the business at the factory—personally I mean?

A. In what respect?

89. What did you know as to what was done there? Did you go down there at intervals, and how often?

A. I would go down there, may not have been down there more than four or five times in 1885 to 1886.

90. Who had the active management of it—the running
179 of it?

A. Towards the close of it Mr. Ott's son-in-law, Henry Goettsch.

91. Then how did you make your entries in the books in reference to the business at the factory? Where did you get the memoranda?

A. All goods that were purchased concerning the factory account I received the bills and charged it to factory account; for labor account received the time roll from the foreman showing the amount required to pay to laborers, and all goods manufactured at the factory were hauled up to the warehouse by team and each load a memorandum was taken of on a ticket.

02. What, if anything, did you know personally in regard to this matter of glazing—what was done and how it was handled?

A. Mr. Ott, Jr., had charge of that part. When he was not present he had a man there.

93. What I want to know is what you know personally and how do you know it?

A. Mr. Ott, Jr., had charge of it. When he was not present he had a man in charge of it. He was required to prime and nail and tack the glass, putty them, and pack the windows in bundles ready for shipping.

94. You don't know anything personally about the work?

A. He was there to see that the work was done.

95. Where was it done?

A. In the warehouse.

96. Then you did look after that?

A. Yes, sir.

97. In regard to those car-loads of glass that were on the track you were asked if they had a right to draw drafts upon you when they were delivered to the railroad Co., I think. On what time were those drafts drawn—that is, as to whether it was a sight
180 draft or whether it was on time?

A. 90 day drafts from the time of shipment.

98. Now, you say that it frequently happened that Ott contracted to sell goods sometime before he had manufactured them; how were these contracts made?

A. They were in most of cases made in writing by orders by his

son, George Ott, Jr., taking the orders from the parties purchasing goods.

99. Did these orders require the freight delivered at some specified time or simply to be filled as soon as could be?

A. They were of both natures.

100. Can you produce any of these orders?

A. Yes, sir.

101. We would like to have you do so. The orders received in 1886, are they all kept together? The orders previous to that, but to be shipped in 1886, I wish you would produce those.

A. Yes, sir.

102. Would he make contracts to purchase goods sometime before they were delivered—that is, for future delivery?

A. Goods that Mr. Ott purchased?

103. Yes; they would also be in writing in most of cases?

A. —.

104. Have you any writing relating to that matter?

A. Yes, sir.

105. In what shape are they?

A. In a shape showing that the parties sold to George Ott, describing the quantity of goods that was shipped within certain time and the quality, stating terms, etc.

106. These contracts were signed by the parties from 181 whom he purchased?

A. Yes, sir.

107. The memoranda or contracts were in the form of propositions to him and accepted by him?

A. The purchase was made. It was understood he had made the purchase and they would hand it to him in the shape of writing.

108. Were they to be delivered at a specified time or within a certain time?

A. Some would state to be delivered within a certain time and others as soon as possible.

109. Will you produce all of these orders that you can find during the year 1886, or to be delivered in 1886?

A. Yes, sir.

110. Now, I understand you to say in answer to a question of Mr. Bills that a number of doors had been purchased from the Conly Lumber Co. on which there was a profit; you didn't give the date.

A. I would have to refer to the books.

111. Please make such reference and tell us the date when these doors were purchased.

A. These books are not present.

112. What books are they?

A. I would have to look to the invoice book in which they would be. This invoice book didn't start until the 23rd of December, 1885.

113. Will you examine into that? Did Ott continue to manufacture doors during the time, up to the time of his failure?

A. Yes, sir.

114. I understood you to say that those went down, but still it

cost just as much to make them. During what period did they go down in price?

182 A. From the fall of 1883 up to the time of the failure.

115. How did the price of doors in Feb., March, and April, 1886, compare with the price of doors during the corresponding period of the year 1885?

A. I would have to refer to the books to see.

116. Can you do that without much trouble?

A. Yes, sir; there is no material or great change in price.

117. Do you know when that contract was made with Mr Hoagland for the job lot which you spoke of in your cross-examination?

A. I cannot give the exact date without reference to the contracts.

118. Will be among the contracts you will produce?

A. Yes, sir.

Recross-examination by Mr. BILLS:

Recross-interrogatory 1. Mr. George Ott, Sr., is of German birth, is he not?

A. Yes, sir.

2. Has he any very good knowledge of the English language?

A. No, sir.

3. Is he able to write letters in English?

A. No, sir.

4. During the time you were there did he do anything in the way of writing which amounted to anything, except to sign his name?

A. No, sir; he did no writing whatever of a business nature.

183 5. He did no writing whatever of a business nature, you say?

A. Yes, sir; except sign his name to checks and notes.

6. Why were you behind with posting your books?

A. Because I deemed other matters to be of more importance—attending to entering up orders and seeing that they were attended to, that they might go out as promptly as possible; and having large, extensive shipments to make right along it required most of my day's attention, leaving me to do my office work after quitting time—to post up my books Sundays.

7. Was George Ott, Jr., out on a trip to sell goods just before the assignment?

A. Yes, sir.

8. State whether or not he had succeeded in making anything like his usual sales on the trip.

A. No, sir; he had not.

9. Do you know whether that was the situation generally here, as to jobbers and manufacturers, at that time?

A. Yes, sir; it seemed to be the same situation with other jobbers.

10. Did you order those four car-loads of glass and other glass at the same time? Did you order them yourself?

A. That order had been placed some time before—probably in December or January; along there.

11. State whether or not Mr. Ott told you about that time that

when glass got down to a certain figure you should order a quantity.

A. Yes, sir; I consulted him about ordering glass and came to the conclusion that glass was as low as it had ever been, and that it was a favorable time to buy.

184 12. Did you have quite a large stock of glass on hand at the time of the failure?

A. Yes, sir.

13. Was that the reason it was sold—on account of low prices?

A. Yes, sir; with the expectation things would take a better turn during the summer season.

14. I will ask you whether it advanced in price immediately after the assignment; and, if yes, to what extent?

A. Glass advanced some considerable immediately after the assignment.

Redirect examination by Mr. COOK:

Redirect interrogatory 1. Mr. Ott has no difficulty in conversing in English, has he?

A. He can make himself understood, but he cannot find the words to talk fluently.

Adjourned until Tuesday morning at 10 o'clock, March 29th, 1887.

Redirect examination of Mr. HEESCH continued:

2. I now show to you a letter dated the 11th day of Feb., 1886, Omaha, Nebraska, directed to George Ott, signed by George A. Hoagland, per White, requesting the shipment of one car of mouldings, to be delivered at Omaha, Neb., at 65 and 5 off, and ask you if that letter was received by George Ott, or you for him, in the ordinary course of his business; and, if so, find, if you can, the invoice of the goods sold to Mr. George Ott from which he filled the said order.

Objected to as immaterial.

185 A. Yes, sir; the letter was received in due course of time. The order was accepted and shipped to Hoagland March 12th, 1886, being a direct purchase from the H. H. Wright Lumber Co.

The letter is offered in evidence, to be copied and marked Exhibit No. "30."

Car was shipped by Wright to Davenport and forwarded by Ott to Hoagland at Omaha.

3. Was the same car and the same goods forwarded?

A. Yes, sir.

4. What was the price at which you filled the order?

A. The goods were sold by Ott at 65 and 5 off, delivered at Omaha.

5. He paying the freight from Davenport?

A. Yes, sir; the purchase from Wright was at 65 and 5 off, freight paid to Davenport.

6. What did Mr. Ott lose or gain on that transaction?

A. Mr. Ott was at a loss of the amount of freight from Davenport to Omaha.

7. I now hand you a document purporting to be a duplicate lease and agreement, dated the 26th of February, 1877, from Rudolph Fuhrman and Charlotte Fuhrman to George Ott, Louis A. Ochs, and Joseph Ochs for the so-called stone quarry, said lease having indorsed upon it an assignment from L. A. Ochs and Joseph Ochs to George Ott — all their interest in said lease, dated Jan. 7th, 1878, and ask you whether or not that is the lease which Mr. Ott held for the so-called stone-quarry property in Muscatine Co.?

A. Yes, sir; that is the lease.

186 The lease is offered in evidence and marked Exhibit No. "31," to be copied and the copy marked as Exhibit No. "31."

I believe that is all, Mr. Heesch.

Recross-examination by Mr. BILLS:

Recross-interrogatory 1. You may state whether or not Mr. Ott manufactured a kind of a mouldings ordered in the letter of Mr. Hoagland of Feb. 11th, 1886, and if Mr. Ott did manufacture them you may state why he did not fill said order from his own factory.

A. Yes, sir; Mr. Ott manufactured mouldings. At that time we had a number of other orders for moulding and the capacity was not sufficient to fill all orders within a reasonably short time, and Hoagland beginning to be urgent about his order, to have his order filled, we thought it best policy to try and go outside and buy a car of mouldings, such as he desired, to fill the order, and that was the reason why that car had been bought. We bought of Wright, that being as low a figure as we seemed to be able to get at that time.

2. Was Hoagland a good customer of Mr. Ott's?

A. Yes, sir; in all respects he seemed a good customer—good pay and fair and square in all his dealings.

3. Did you know how much money Mr. Ott lost in the stone-quarry business?

A. No, sir; not definitely. I never made it a point to take the matter under consideration.

187 4. You may state whether or not you have made an examination or comparison with the books of the statement which purports to have been made by Charles F. Meyer, the former assignee, showing the amount of goods purchased by Mr. Ott from the South Branch Lumber Co. between the 20th day of Feb., 1886, and the time of his assignment, and also the amount of payments which he made on account to the South Branch Lumber Co. between the 20th day of Feb., 1886, and the time of his assignment, and also the amount of payments which he made on account to the South Branch Lumber Co. during the same time.

Objected to as immaterial and not proper cross-examination.

A. Yes, sir; I have.

5. Do you find said statement to be correct?

Objected to for the same reason as the last preceding cross-interrogatory.

A. Yes, sir; I find it to be correct, being as the books show the actual amount of transactions.

6. Will you please produce the said statement to the notary, that the same may be copied and marked as Exhibit No. "32," and the defendant offers the same in evidence in this case.

Objected to as immaterial, irrelevant, and not proper cross-examination.

7. You may state the total amount of the payments which Mr. Ott made to the plaintiff during that time.

Objected to for the same reason as the last preceding cross-interrogatory.

188 A. The total amount of payments made to the South Branch Lumber Co. between the 20th day of Feb. and the 27th of April, 1886, amounted to $12,172.38.

8. You may state the total amount of purchases during that time.

Objected to for the same reason as the last two preceding cross-interrogatories.

A. The total amount of purchases during the same period of time amounted to $8,977.86.

9. You spoke of adjusting a claim which Mr. Reipe had against Mr. Ott just before the assignment. Was the claim on part of Reipe a personal debt of Mr. Ott's, or was it for drugs or medicines or something that was used for horses that were sick, used in the business?

A. To my recollection, it was for medicine used for the business—medicines used for the treatment for horses.

10. I will ask you the same question in regard to the claim adjusted with Mr. Naeckel for goods used in the business—putty and points, etc.

A. Yes, sir; to my recollection, for goods that had been used in the course of business by Mr. Ott.

That is all.

The witness fees of Mr. Heesch, by consent, are taxed at $15.00; paid by the plaintiff.

189 DAVENPORT, IOWA, THURSDAY A. M., *April 7th*, 1887.

The cross-examination of Mr. HEESCH continued by Mr. BILLS:

Cross-interrogatory 1. I call your attention to the order of Feb. 11th, 1886, from G. A. Hoagland, upon Mr. Ott, for one car-load of mouldings and other goods, and also to the letter or order of Dec. 11th, 1885, for ten car-loads of goods, and ask you to state in whose handwriting the orders and letters are.

A. Both orders are in the handwriting of George Ott, Jr., and

signed by G. A. Hoagland; the one Feb. 11th, 1886, is signed G. A. Hoagland, per White.

2. State whether or not these orders were taken at Omaha by Mr. George Ott, Jr.

A. Yes, yes; they were taken at Omaha by Mr. George Ott, Jr., and, I judged, in Mr. Hoagland's office.

3. Did George Ott, Jr., have authority to make actual sales, or only authority to take orders, to be approved by his father?

A. Mr. George Ott, Jr., had authority to make actual sales.

That is all.

(Signed) WM. HEESCH.

STATE OF IOWA, }
Scott Co., } *ss:*

Subscribed and sworn to this 13th day of April, 1887, by the said Wm. Heesch, before me, Flora Haddix, a notary public in and for Scott Co., Iowa.

Witness my hand and notarial seal, affixed the day and year last above written.

[SEAL] (Signed) FLORA HADDIX,
Notary Public, Scott Co., Iowa.

190 In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division.

THE SOUTH BRANCH LUMBER CO. }
vs.
GEORGE OTT, SR., *et al.* }

Messrs. Cook & Dodge, Smith & Helmer, and A. J. Hirschl appear for South Branch Lumber Co.

Messrs. Bills & Block appear for George Ott, Sr., and J. B. Meyer, substituted assignee.

Mr. Ernst Claussen appears for Charles Hill.

Mr. Bleik Peters appears for Addie Kloppenberg.

Testimony on Part of Plaintiff.

Deposition of Wm. Heesch.

DAVENPORT, IOWA, *June 23rd, a. m.*, 1887.

Continuation of the testimony of Mr. WILLIAM HEESCH, to be transcribed and signed by him and attached to his principal deposition.

By Mr. COOK:

Interrogatory 1. You may state whether or not since the last adjournment you have made an examination of the books of George Ott to ascertain the amount of money that was expended for machinery on the Ott property—factory, kiln, etc.

A. Yes, sir; I have.

2. Now, will you take the memoranda that you have made and state about what the amount of those improvements is from
191 the first of January, 1884, to the 26th of April, 1886.

A. The amount of these improvements, as far as the books will show, from January, 1884, up to April 26th, 1866, was $3,459.12.

3. State generally the nature and character of those machinery improvements.

A. The nature of them was to a great extent in building a dry kiln, some new machinery required to make different parts complete, and a new boiler—an additional boiler to what there was there.

4 Q. Was the old boiler left there?

A. Yes, sir. There were originally two boilers, and another one was added to it.

5. Can you tell about the proportion of improvements made in each year—the amount paid during each one of those years for improvements?

A. Yes, sir.

6. Please give it as near as you can.

A. In 1884 the amount was $573.84; in 1885 it was $2,558.36; in 1886 it was $326.92.

7. Now, Mr. Heesch, you may state whether since the giving of your former deposition you have made up a statement from the books of George Ott showing the amount of accounts receivable due, as shown by those books, on the 23rd of January, 1885; and, if so, you may state what that amount was.

A. Yes, sir; I have, and the amount was $6,071.87.

8. You may state whether or not you made up a statement from the same books of the bills receivable on the same day, January 23rd, 1885; and, if so, what was the amount thereof.

192 A. Yes, sir; I have the amount at that date—$870.36.

9. State also whether or not you have made up a statement of the accounts payable on the books of George Ott on the 23rd of January, 1885; and, if so, the amount thereof.

A. Yes, sir; I have; and the amount at that date of accounts payable was $17,688.50.

10. Now you may state what was the amount of accounts receivable as shown by the trial balance of December 22nd, 1884.

The defendants object to all this evidence in regard to the statements as incompetent and immaterial.

A. The amount of accounts receivable as shown by the trial-balance book December 22nd, 1884, is $9,244.56.

11. You may now state the amount of accounts receivable as shown by George Ott's trial balance on the 12th of Feb'y, 1885.

A. The amount of accounts receivable as shown by the trial-balance book Feb'y 12th, 1885, is $7,889.62.

12. Among the accounts receivable on Jan'y 23rd, 1885, you may state, if you know, whether or not there were included any accounts

that were long past due from dealers and others who had purchased from Mr. Ott.

A. Yes, sir; there are some such accounts.

13. Can you form any accurate estimate of the amount of accounts of that character which have been due, say, for more than two years and remain unpaid?

193 A. I can form no accurate estimate from memory.

14. Will you look at the trial-balance book, taking the balances of December 22nd, 1884, and Feb'y 12th, 1885, and see what accounts you find which are on both of said trial balances that, as near as you can tell, had been due for more than two years before the dates on the trial balances?

A. I find there were the following accounts that were due for more than two years: Waterman & Bernard, $508.52; George B. Swan, $6.70; Dr. Hoefner, $37.50; W. O. Kulp, $127.20; Dean & Son, $37.50; Smith & Bros., $54.65; L. Arnold & Son, $92.57; M. Defoy, $6.15; M. Martin, $14.45, amounting to in total $885.24.

15. Can you tell about how long the balance of account had stood against Waterman & Bernard?

A. I can't say definitely, as the balance is carried forward into this ledger January 22nd, 1880, from the previous ledger.

16. Well, had that account—the balance of that account as transferred into the ledger in January, 1880—remained in that way up to the time of the failure?

A. Yes, sir.

17. Up to the present time?

A. Yes, sir.

18. As far as you know?

A. As far as I know.

19. Now, do you know whether the said firm of Waterman & Bernard had been insolvent for many years—gone out of business?

A. As I understand it they had failed; but one of the firm was situated so that there may be something realized.

20. Do you know about when they failed?

A. I can't say; I judge it was either along in 1878 or 1879.

194 21. State whether or not you have made an examination and list of the orders during the month of September, 1885, and up to the time of the failure, April the 26th, 1886, of Geo. Ott, and also of the sales during the same time; and if you have, you will please state, if you are able, the average for each month of such orders and sales.

A. Yes, sir; I have made an examination, and I find the amount of sales in Sept., 1885, to have been $25,756.30; in October, 1885, $29,106.93; in November, 1885, $22,314.81; in December, 1885, $22,570.79; in Jan'y, 1886, $22,394.90; in Feb'y, 1886, $26,534.22; in March, 1886, $29,896.41; in April, 1886, $25,352.39. This is the total amount of all sales, including everything as it was sold.

22. What is the total amount?

A. The total amount for the eight months is $203,926.75. The number of car-load lots shipped in September, 1885, was 29½ cars; in October, 1885, was thirty-five cars; in November, 1885, was 26

cars; December, 1885, 27 cars; in Jan'y, 1886, 29 cars; in Feb'y, 1886, 35 cars; in March, 1886, 40 cars; in April, 1886, 29 cars. The number of car-load orders received during these months were: September, 1885, 40½ cars; October, 1885, 32 cars; November, 1885, 33 cars; December, 1885, 26 cars; Jan'y, 1886, 31 cars; Feb'y, 1886, 35 cars; March, 1886, 44 cars; April, 1886, 16 cars.

Cross-examination by Mr. BILLS:

Cross-interrogatory 1. State whether or not any of the accounts receivable that you say had been due for two years or more,
195 as stated, have ever been paid.

A. There may be a few of them that were offset by other accounts against Ott.

2. Was the Hoefner bill paid?

A. By adjusting the accounts between himself and Mr. Ott; yes, sir.

3. What other ones, if any?

A. The W. O. Kulp account was adjusted. That, I think, is all.

4. Where is the firm of Dean & Son located?

A. They are located in the State of Nebraska, but I can't call to memory the city that they are in. The account was a disputed amount, and remained open on the books carried forward, thinking that some day we might adjust it some way.

5. Where are Smith & Bros. located?

A. They were a firm in the city of Davenport—painters.

6. Has the George B. Swan account ever been paid, to your knowledge?

A. If I recollect right, that amount was cancelled against his account as given to him gratis by Mr. Ott.

I guess that is all.

(Signed) WM. HEESCH.

STATE OF IOWA }
Scott County, } *ss:*

Subscribed and sworn to by the said William Heesch on the 24th day of June, 1887, before me, Flora Haddix, a notary public in and for Scott county, Iowa.

Witness my hand and notarial seal, affixed the day and year last above written.

(Signed) FLORA HADDIX,
[SEAL.] *Notary Public, Scott County, Iowa,*
Notary Public in and for Scott County.

Additional witness fees, by consent of Mr. Heesch, paid by complainant, $10.00.

200 EXHIBIT No. 9.

A Statement of the Amount in Value of Merchandise Purchased by George Ott between February 20th and April 27th, 1886, Inclusive, Referred to in Direct Interrogatory No. 121.

23 02	756 60	962 98	1,451 40
904 17	53 20	1,199 44	1,745 10
345 60	1,055 66	22 40	616 95
41 02	817 07	256 00	4 88
38	1,055 26	867 65	27 00
2 13	559 06	38 25	1,237 94
87 75	42 24	501 77	35 87
4 80	666 52	4 80	958 25
3,640 40	10 46	872 54	748 19
43 00	528 00	693 15	26 18
828 23	647 39	781 31	9 80
601 15	37 37	348 00	405 00
1,031 55	72	849 77	4 80
1,065 48	136 50	25 68	7 36
401 51	4 80	735 67	434 00
1,012 05	665 76	128 28	11 20
8 75	1,229 23	236 12	2 98
6 00	911 82	2 15	23 65
3,064 58	1,096 88	63	6 88
750 75	542 00	237 50	46 52
10 46	318 09	3 13	19 60
4 25	1,788 98	23 40	4 05
356 60	25 50	43 13	32 25
1,210 82	74 77	670 83	9 80
68 89	336 00	74 64	54 90
46 85	530 77	4 80	53 96
23 65	615 94	21 87	29 45
1,648 45	200 00	4 65	4 05
1,009 17	19 00	5 06	900 16
685 22	27 00	42 04	12 25
1,663 50	828 59	2,008 92	77 83
268 90	25 02	762 00	
36 25	2 13	2 16	
1,145 73		8 69	
1,591 25			
$23,632 31	$15,601 33	$12,439 41	$9,003 05

	23,632 31
	15,601 33
	12,439 41
	9,003 05
Total	$60,676 10

201 Ex. No. 13, F. H.

Invoices rec'd for goods purchased from—

H. W. Wright L'b'r Co.,	Dec.	23.	Doors @ 65 & 5 & 2½	%	off.
			Blinds " 70 & 5		"
			Open sash @ 80		"
" " "	"	23rd.	Doors @ 65 & 5 & 2½		"
			" " 65 & 5		"
			Blinds " 70 & 5		"
" " "	"	28th.	Doors " 65 & 5 & 2½		"
			" " 65		"
			Blinds " 70 & 5		"
			Blinds " 70 & 10		"
Bohn M'f'g Co.,	Dec.	28th.	Doors @ 65 & 5		"
H. W. Wright L'b'r Co.,	Jan.	22.	Doors @ 65		"
"		30.	Moulding @ 65 & 10		"
Jos. P. Gould,	Feb.	5.	Doors @ 55 & 5	%	off.
" "		8.	" " 55 & 5		"
Chicago L'b'r Co.,	"	16.	" " 60 & 5		"
" "	"	17.	" " 60 & 5		"
" "	"	17.	" " 60 & 5		"
R. Isl'd L'b'r M'f'g Co.,	Feb.	26.	Doors @ 60 & 2½	%	off.
Conway M'f'g Co.,	"	26.	" 60 & 5		"
R. I. Lumber & M'f'g Co.,	"	27.	" 60 & 2½		"
Conway M'f'g Co.,	"	27.	" 60 & 5		"
			Blinds 70		"
Paine Lumber Co.,	M'ch	5.	Doors 55 & 5		"
			Blinds 65 & 5		"
" "	"	5.	" 65 & 5		"
			Doors 55 & 5		"
" "	"	6.	" 55 & 5		"
			Blinds 65 & 5		"

202 Invoices rec'd for goods purchased from—

H. W. Wright L'b'r Co.,	M'ch	8.	Moulding @ 65	%	off.
Conway M'f'g Co.,	M'ch	8.	Blinds & open sash " 70		"
H. W. Wright L'b'r Co.,	M'ch	10.	Blinds @ 65 & 10		"
Chicago L'b'r Co.,	M'ch	11.	Doors " 60 & 5		"
" "	"	17.	" " 60 & 5		"
" "	"	20.	" " 60 & 5		"
Paine L'b'r Co.,	"	24.	" " 55 & 5		"
			Blinds " 65 & 5		"
" "	"	25.	" " 65 & 5		"
			Doors " 55 & 5		"
Conway M'f'g Co.,	M'ch	25.	Blinds @ 70	%	off.
			Open sash @ 70	%	off.
Paine L'b'r Co.,	Ap'l	8.	" " " 70		"
Chicago L'b'r Co.	"	10,	Doors @ 60 & 5		"
Paine L'b'r Co.,	"	20.	Open sash @ 70 & 10	%	off.

203 Shipped as per bill book.

1886. #1.

Jan.	4.	Car part doors,	@	65 %	off.
"	6.	" " "	"	64	"
"	6.	" " "	"	65	"
	8.	" " "	"	65	"
	8.	" " "	"	65	"
	8.	" " "	"	65 & 2½	"
	9.	" " "	"	65	"
	9.	" " blinds,	"	68½	"
	12.	" " "	"	67½	"
	12.	" " doors,	"	63	"
	12.	" " "	"	65	"
	14.	" " blinds,	"	70 & 5	"
	15.	" part doors,	"	60	"
	16.	" " "	"	65 & 5	"
	16.	" " blinds	"	70	"
	18.	" " doors,	"	63	"
	20.	" " "	"	65	"
	20.	" " blinds,	"	70	"
	20.	" " doors,	"	65	"
	26.	" " "	"	65	"
	27.	" " "	"	65 & 5	"
	29.	" part "	"	64	"
		" blinds	"	70	"
	30.	" " doors,	"	63	"
		" blinds,	"	68½	"
	30.	" " doors,	"	65 & 2½	"
	30.	" " "	"	64	"
Feb'y	3.	" part blinds,	"	70 & 2½	"
		" " "	"	69	"
	3.	" " doors,	"	64	"

204 Shipped as per bill book.

#2.

Feb'y	5.	Car mouldings,	@	65 %	off.
"	5.	" part doors,	"	65	"
		" blinds,	"	70 & 5	"
	6.	" " "	"	70 & 2½	"
		" doors,	"	65	"
"	9.	" " doors,	"	60 & 5	"
"	11.	" part "	"	63	"
		" moulding,	"	65 & 5	"
"	12.	" " "	"	65	"
		" " doors,	"	65	"
"	12.	" " "	"	60	"
		" " blinds,	"	70	"
"	13.	" " "	"	70 & 5	"
		" doors,	"	65	"

Feb'y 16.	Car part blinds,	@	67½	%	off.
	" doors,	"	67½		"
" 16.	" doors,	"	65		"
" 17.	" part doors,	"	63		"
" 20.	" " "	"	64		"
" 23.	" blinds,	"	70 & 5		"
" 23.	" doors,	"	65		"
" 23.	" part "	"	60		"
" 24.	" " "	"	60 & 5		"
" 26.	" " "	"	60		"
" 25.	" "	"	60 & 5		"
" 26.	" part blinds,	"	68		"
	" doors,	"	60		"
" 26.	" " "	"	60 & 5		"
" 27.	" part "	"	63		"
	" " moulding,	"	65		"

205 Shipped as per bill book.

3.

Feb'y 26.	Car doors,	@	60 & 5	%	off.
M'ch 1.	" part "	"	65		"
" 2.	" "	"	60 & 5		"
" 1.	" "	"	60 & 5		"
" 4.	" "	"	65 & 5		"
" 5.	" part "	"	60		"
	blinds,	"	70		"
	m'ld'g,	"	65 & 5		"
" 6.	" doors,	"	60 & 5		"
" 9.	" part "	"	63		"
	" m'ld'g,	"	65		"
" 10.	" doors,	"	60 & 5		"
" 10.	" part "	"	63		"
" 10.	" "	"	62		"
" 11.	" blinds,	"	70		"
" 12.	" part doors,	"	58		"
	m'ld'g,	"	60		"
" 12.	" moulding,	"	65 & 5		"
" 16.	" blinds,	"	72½		"
" 17.	" part doors,	"	60 & 5		"
" 17.	" doors,	"	60		"
" 17.	" part "	"	63		"
" 18.	" " "	"	58		"
	" moulding,	"	60		"
" 20.	" " blinds.	"	67		"
" 20.	" " doors,	"	58		"
	" m'ld'g,	"	65		"
" 22.	" " doors,	"	55 & 5		"
" 24.	" "	"	60		"

206 #4.

Shipped as per bill book.

M'ch	24.	Car		doors,	@ 60	% off.
"	24.	"	part	"	" 55 & 5	"
"	25.	"	"	"	" 60 & 5	"
"		"		blinds,	" 70	"
"	25.	"		doors,	" 60 & 2½	"
"	27.	"		"	" 65	"
"	30.	"	part	moulding,	" 65	"
"	30.	"		blinds,	" 70	"
April	1.	"		doors,	" 60	"
M'ch	31.	"	part	"	" 55 & 5	"
April	1.	"	"	"	" 65	"
			"	moulding,	" 65 & 5	"
"	2.	"	"	doors,	" 60	"
			"	blinds,	" 68	"
			"	m'ld'g,	" 65	"
"	3.	"	"	blinds,	" 60 & 10	"
"	3.	"	"	doors,	" 63	"
"	3.	"	"	"	" 60	"
"	5.	"		"	" 60	"
"	6.	"	part	"	" 60	"
			"	m'ld'g,	" 65	"
			"	blinds,	" 68	"
"	8.	"		doors,	" 60	"
"	8.	"	part	"	" 58	"
		"	"	m'ld'g,	" 60	"
"	9.	"	"	doors,	" 60 & 5	"
		"	"	blinds,	" 70	"
"	10.	"	"	doors,	" 60	"
"	12.	"	"	"	" 60	"
"	13.	"	"	blinds,	" 65	"

207 #5.

Shipped as per bill book.

Apr'l	13.	Car	part	doors,	@ 60	% off.
"	13.	"		mouldings,	" 65	"
"	14.	"	part	"	" 55	"
"	15.	"		blinds,	" 70	"
"	16.	"	part	doors,	" 55 & 5½	"
"	17.	"	part	blinds & m'ld'gs,	" 65	"
			"	doors,	" 60	"
"	21.	"	"	"	" 55 & 5	"
"	21.	"		"	" 60 & 5	"
"	21.	"	part	"	" 55 & 10	"
"	22.	"		"	" 60 & 5	"
"	24.	"	part	"	" 55 & 5	"
"	23.	"	"	"	" 55	"
"	24.	"	"	blinds,	" 65 & 10	"

Apr'l 24.	Car part doors, m'ld'g,	@ 63		% off.
" 26.	" part doors,	" 65 &	5	"
" 26.	" " blinds,	" 55 &	5	"
	" moulding,	" 65		"
	" doors,	" 65		"

208 Office of George Ott, manufacturer of sash, doors, blinds, and mouldings; glazed windows a specialty; office, 410 West Front street.

DAVENPORT, IOWA, *Jan.* 23, 1885.

South Branch Lumber Co., Chicago, Ill.

GENTS: Enclosed please find the desired statement of my financial standing, which I trust you will find to be to your satisfaction, while remaining,

Yours very truly,
(Signed) GEORGE OTT.
H.

Ex. No. 17, F. H.

209 DAV'P'T, IA., *Jan.* 23, '85.

Warehouse	14,000	M't'ge on factory	10,000
Factory, dry kiln, mach'y, & grounds	39,700	" " warehouse	4,000
Stock in process of mftr.	7,000	" " residence	3,000
Lumber	26,547 81	Bills payable	36,798 69
Teams, wagons, harness, & office fixtures	2,150 27	Acs. payable	10,523 48
Stock of glazed sash, doors, glass & blinds, &c.	29,720 55		
% & bills receivable	11,157 82		
Residence	16,000		
Quarry	11,000		
	157,276 45		64,321 17
	64,321 17		
	$92,955 28		

Ex. No. 18, F. H.

210 George Ott, manufacturer of sash, doors, blinds, & mouldings; glazed windows a specialty; office, 410 West Front St.

DAVENPORT, IOWA, *April 8th*, 1886.

South Branch Lumber Co., Chicago, Ill.

GENTS: I herewith enclose you statement of my financial standing, which I trust you find to be satisfactory, while remaining,

Yours truly, GEO. OTT.
H.

Ex. No. 19, F. H.

211 All claims must be made within five days after receipt of goods.

All bills not paid at maturity are subject to sight draft without notice.

DAVENPORT, IOWA, *M'ch 29th*, 1886.

M. —— ——:

Statement of George Ott, manufacturer of and wholesale dealer in sash, doors, blinds, glass, and mouldings; glazed windows a specialty; office, 410 West Front street.

Terms, —; assets, —.

Accounts receivable and bills receivable	$14,014 18
Glass, sash, doors, blinds, &c., as per inventory	47,176 77
Factory, machinery, & grounds as estimated by Mr. Ott	49,146 00
Lumber and mouldings, and stock in process of mfr., as estimated by Mr. Ott	35,460 00
Quarry, estimated by Mr. Ott	14,000 00
Warehouse, " " " "	16,000 00
Teams, wagons, &c., estimated by Mr. Ott	2,740 00
Residence " " " "	16,000 00
	$194,536 95

Liabilities.

Bills payable	108,310 02	
Accounts payable	46,138 82	
M'tg'e on factory	10,000 00	
" " warehouse	3,500 00	
" " residence	3,000 00	
		170,948 84
		$23,588 11

Total insurance carried, $88,500.00.

Ex. No. 20, F. H.

212 EXHIBIT No. "21."

Claims for allowances must be made on receipt of lumber. Remittances must be prepaid.

Interest invariably charged after maturity at 10 — per annum.

All bills subject to sight draft after —.

MERRILL, WIS., *March 8th*, 1886.

Geo. Ott, Esqr., Davenport, Iowa, bought of the H. W. Wright Lumber Co., lumber, shingles, laths, doors, sash, blinds, and mouldings.

Car No. 7002.
Terms, 90 ds. ac'pt's; interest after 60 ds.

Delivered—

1,028 ft.	No. 4015 moulding,	2.40		24 67
4,000 "	No. 4022 "	2.40		96 00
2,000 "	No. 4024 "	2.80		56 00
2,000 "	No. 4026 "	2.00		40 00
2,000 "	No. 4025 "	4.70		94 00
2,000 "	No. 4035 "	2.80		56 00
1,620 "	No. 4034 "	2.00		32 40
1,500 "	No. 4042 "	1.80		27 00
2,000 "	No. 4050 "	2.70		54 00
310 "	No. 4049 "	.75		2 32
2,000 "	No. 4072 "	1.40		28 00
650 "	No. 4496 "	2.25		14 63
10,000 "	No. 4005 "	2.40		240 00
10,000 "	No. 4006 "	2.80		280 00
	5,000 ft., No. 4000 moulding,	2.00		100 00
213	5,000 " No. 4009	3.20		160 00
	5,000 " No. 4502	2.80		140 00
5,000 ft.	No. 4533 moulding,	.90		45 00
5,000 "	No. 4534	1.00		50 00
4,000 "	No. 4071	.90		36 00
4,000 "	No. 4081	.80		32 00
4,000 "	No. 4088	1.00		40 00
4,000 "	No. 4089	1.20		48 00
3,000 "	No. 4047	2.25		67 50
3,000 "	No. 4045	1.95		58 50
3,000 "	No. 4041	1.25		37 50
2,150 "	No. 4073	2.00		43 00
3,000 "	No. 4504	.85		25 50
3,000 "	No. 4506	2.55		76 50
				2,004 52
	Less 65 & 5 per cent. disc.			1,338 00
				666 52

(In lead pencil:) Could not get in this car all of your order, but will ship balance in next car 10 ds.

214 EXHIBIT No. "22."

Geo. A. Hoagland, M'ch 12th, 1886.

1,028	ft. m'ld'g,	4015, 2.40	24	77
4,000	"	4022, 2.40	96	
2,000	"	4024, 2.80	56	
2,000	"	4026, 2.00	40	
2,000	"	4025, 4.70	94	
2,000	"	4035, 2.80	56	
1,620	"	4034, 2.00	32	40
1,500	"	4042, 1.80	27	
2,000	"	4050, 2.70	54	
310	"	4049, .75	2	32
2,000	"	4072, 1.40	28	
650	"	4496, 2.25	14	63
10,000	"	4005, 2.40	240	
10,000	"	4006, 2.80	280	
5,000	"	4000, 2.00	100	
5,000	"	4009, 3.20	160	
5,000	"	4502, 2.80	140	
50,000	"	4533, .90	45	
5,000	"	4534, 1.00	50	
4,000	"	4071, .90	36	
4,000	"	4088, 1.00	40	
4,000	"	4081, .80	32	
4,000	"	4089, 1.20	48	
3,000	"	4047, 2.25	67	50
3,000	"	4045, 1.95	58	50
3,000	"	4041, 1.25	37	50
2,150	"	4073, 2.00	43	00
3,000	"	4504, .85	25	50
3,000	"	4506, 2.55	76	50
			2,004	52
		Less 65 & 5	1,338	
			666	52

C., M. & St. P., car 7002.

215 EXHIBIT No. "23."

Claims for allowance must be made on receipt of lumber. Remittances must be prepaid.

Interest invariably charged after maturity at 10 — per annum.

All bills subject to sight draft after due.

MERRILL, WIS., *Mar. 10th*, 1886.

George Ott, Esqr., Davenport, Ia., bought of the H. W. Wright Lumber Co., lumber, shingles, laths, doors, sashes, blinds, and mouldings.

Car No. 32100.

Terms, 90 ds., acc'pt's; interest after 60 ds.

Delivered—

30	pr. blinds,	24 x 40,	2 lt.,	1⅛,	2.75	82 50
30	"	24 x 38	"	"	2.75	82 50
50	"	24 x 34,	2 lt.,	"	2.50	125
100	"	24 x 32	"	"	2.50	220
50	"	24 x 30	"	"	2.20	110
50	"	20 x 28	"	"	2.00	100
30	"	28 x 40	"	"	2.95	88 50
200	"	12 x 32,	4 lt.,	"	2.20	440
30	"	10 x 36	"	"	2.50	75
50	"	10 x 36	"	"	2.00	100
50	"	10 x 20	"	"	1.55	77 50
100	"	10 x 30	"	"	2.20	220
150	"	12 x 28	"	"	2.00	300
50	"	10 x 12,	8 lt.,	"	1.85	92 50
						2,133 50
				Less 65 & 10 per cent. disc.		1,447 74
						665 76

216 EXHIBIT No. "24."

George A. Hoagland, March 16th, 1886.

200	pr. blinds,	10 x 12,	8 lt.,	1.85	370		
50	"	10 x 20,	4 lt.,	1.55	77	50	
50	"	10 x 26	"	2.00	100	00	
30	"	10 x 36	"	2.50	75		
125	"	12 x 32	"	3.20	275		
100	"	12 x 28	"	2.00	200		
75	"	12 x 30		2.20	155		
30	"	12 x 24	"	1.85	55	50	
50	"	28 x 28,	2 lt.,	2.00	100		
50	"	24 x 30	"	2.20	110		
75	"	24 x 32	"	2.20	165		
50	"	24 x 34	"	2.50	125		
30	"	24 x 38	"	2.75	82	50	
30	"	24 x 40	"	2.75	82	50	
50	bl'ds.,	12 x 32	"	50			25 00
30	pr. bl'ds,	28 x 40	"	2.75	18	50	
					2,071	50	
				72½	1,501	84	
							569 66
							594 66

C., M. & St. P., car 32100.
16—798

217 EXHIBIT No. "25."

Howell, Jewett & Co., October 31st, 1885.

1,000 ft. m'ld'g—	280 200 400 320 300 140 160 4006, 4010, 4014, 4028, 4036, 4072, 4179, 350 200 140 225 180 200 225 4204, 4234, 4315, 4331, 4359, 4403, 4477, 135 80 225 280 960 120 280 4489, 4108, 4429, 4035, 4008, 4101, 4235.	$540	
4,000 "	110 180 4158, 4029	116	
1,000 "	120 470 160 250 100 100 295 4089, 4025, 4316, 4189, 4171, 4357, 4291, 120 160 345 400 225 280 110 4185, 4404, 4285, 4286, 4302, 4428, 4493, 90 4071	322	50
1,500 "	270 90 125 4561, 4159, 4041	72	75
2,000 "	220 80 110 200 280 240 240 4016, 4081, 4083, 4441, 4012, 4015, 4022, 150 270 90 100 4044, 4050, 4082, 4110	416	
2,500 "	200 180 280 4026, 4042, 4024	165	
7,500 "	90 80 100 90 4087, 4086, 4088, 4071	270	
18,000 "	80 4560	144	
		2,046	25
60–5		1,268	67
		$777	58

Car 6; contract 5, 29, 85.
" No. 18864.

218 EXHIBIT No. "26."

Cash Payments Made.

1886.

Feb'y 20.	Sundry	$2 60
		249 41
" 20.	Freight	258 24
" 20.	South Branch Lumber Co., on notes of $900 and $2,446.37	1,000 00
" 22.	Charles Vogel & Co., note	134 68
" 22.	Sundry (labor, etc.)	1,013 93
" 23.	Ottawa Glass Co.	325 75
" 23.	Sundry	80 60

Feb'y	24.	Williamson & Libbey Lumber Co., on note of $636.98	336 98
"	24.	South Branch Lumber Co., on note of $450	225 00
"	24.	Quaker City Window Glass Co., on note	509 53
"	24.	Sundry { 2.55	2 55
		{ 35.69	35 69
"	25.	Sundry	8 00
"	26.	H. W. Wright Lumber Co., on note of $780.39	400 39
"	26.	Austin & Eddy	38 25
"	26.	Sundry	47 33
"	26.	Freight	433 82
"	27.	J. H. Rice, note	335 00
"	27.	Streator Glass Co., note	250 00
"	27.	R. I. Glass Works, a. p. account	452 51
"	27.	Sundry	400 81
Ma'ch	1.	South Branch Lumber Co., on note of $2,290	690 00
	Ma'ch 1.	Sundry (labor, etc.)	973 51
219	" 2.	C. Foster & Co., note	414 00
	" 2.	Sundry	47 58
M'ch	3.	Sundry	34 13
"	3.	H. W. Wright Lumber Co., on note $710.06	360 06
"	3.	Geo. F. Kimball, note	333 55
"	3.	Sickles, Preston & Co., on account	60 00
"	4.	Durr & Rugee, note	215 00
"	4.	Williamson & Libbey Lumber Co., note	610 90
"	4.	Sundry	61 17
"	4.	T. H. Sheppard & Co., on note of 644.74	349 07
"	4.	Radford Bros. & Co., on note of $754.63	458 96
"	5.	R. I. Glass Works, on account	157 82
		For'd	11,304 82
		To amount bro't for'd	$11,304 82
M'ch	5.	Sundry	31 00
"	5.	South Branch Lumber Co., on note of 600	300 00
"	6.	Sundry	310 41
"	6.	Sprague, Smith & Co., note	624 17
"	6.	S. B. Barber & Co., on note of $2,617.33	1,017 33
"	6.	Ebi. & Neuman, note	141 35
"	6.	Freight	348 16
"	8.	Sundries, labor, etc.	957 20
"	8.	South Branch Lumber Co., on note of $850	425 00
"	8.	H. W. Wright Lumber Co., on note of $702.91	402 91
"	9.	Sundry	85 00
"	9.	C. Mueller, on note of $1,520	300 00
	M'ch 10.	The Lyman Lumber Co., note	433 70
220	" 10.	The Quaker City Window Glass Co., on note of $528.52	182 40
M'ch	10.	Incidentals	27 70
"	11.	Incidentals	313 59
"	11.	Quaker City Window Glass Co., note	511 56

M'ch	12.	Snider, Miles & Baxton, on note of 207.19	109 17
"	12.	Sundry	52 27
"	12.	Conlee Lumber Co., on note of 2,995.70	1,495 70
"	13.	Sundry	66 12
"	13.	H. W. Wright Lumber Co., on note of $792.91	300 00
"	13.	Heath & Milligan M'f'g Co., on acc't	121 68
"	13.	Williamson & Libbey Lumber Co., note	836 74
"	13.	Geo. Wamhoff & Co., on notes of $250 and $275	625 00
"	13.	Freight	345 35
"	15.	Sundry, labor, etc.	1,263 59
"	15.	Getsinger & Son, on note of $940.40	497 20
"	17.	Sundry	2 60
"	18.	South Branch Lumber Co., on note of $2,800	800 00
"	18.	T. C. Hanford Oil Co., note	320 65
"	18.	Sundry	69 42
		For'd	24,620 70
		To amount brought forward	$24,620 70
"	19.	Sundry	147 03
"	20.	Durr & Rugee, note	215 00
"	20.	The Bohn M'f'g Co., Winona, acc't	593 13
"	20.	Sprague, Smith & Co., on note of $626.21	326 21
		M'ch 20. Freight	397 12
221		" 20. Sundries	88 10
		" 22. S. B. Parker & Co., on note of $3,279.25	1,279 25
M'ch	22.	Sundry, labor, etc.	1,124 39
"	23–'5.	Sundries	72 78
"	23.	Chas. Vogel & Co., note	271 88
"	24.	Geo. F. Kimball, note	189 10
"	24.	H. W. Wright Lumber Co., note	635 00
"	24.	Union Stone Co., note	126 05
"	25.	Lyman Lumber Co., note	434 15
"	25.	H. W. Wright Lumber Co., note	574 35
"	26.	Sundry	18 59
"	27.	J. B. Gould, note	439 35
"	27.	Quaker City W. Glass Co., on note of 530.26	265 26
"	27.	South Branch Lumber Co., on note of 1,600	600 00
"	27.	Freight	409 77
"	27.	"	111 48
"	27.	Sundry	90 25
"	29.	" labor, etc.	1,096 69
"	30.	South Branch Lumber Co., on note of $2,459.17	859 15
"	30.	Sundry	94 60
"	31.	Conlee Lumber Co., on note $1,440.15	720 15
"	31.	Bohn M'f'g Co., Winona, acc't	560 65
"	31.	M. B. Adwater & Co., on note of $450	225 00
"	31.	Sundry	115 69
April	1.	"	71 63

April	1.	Jos. P. Gould, note	445 00
"	2.	H. W. Wright Lumber Co., note	639 14
		For'd	37,856 75
222		To amount brought forward	37,856 75
	April	2. Sundry	132 40
April	3.	C. H. Meyer, note	250 00
"	3.	Washington Glass Co., on note of 899.47	449 47
"	3.	Getsinger & Son, on note of 958.04	508 04
"	3.	Sundry	53 38
"	5.	J. M. Albertson & Sons, on note of 1,102.77	602 77
"	5.	Sundry, labor, etc.	1,185 86
"	6.	R. I. Glass Works, on acc't	192 32
"	6.	Sundry	8 13
"	7.	Sundry	23 13
"	7.	Freight	469 95
"	8.	C. Getman, note	1,090 23
"	8.	Sundry	50 04
"	9.	Washington Glass Co., note	999 40
"	9.	M. Kunkel, note	306 07
"	9.	Sundry	93 58
"	10.	M. B. Adwater & Co., note	500 00
"	10.	H. W. Wright Lumber Co., note	476 22
"	10.	Sundry	118 15
"	12.	Sundry, labor, etc.	981 74
"	14.	Snider, Miles & Baxton, note	123 00
"	14.	Monroe & Co., note	741 15
"	14.	Freight	451 70
"	14.	Sundry	17 96
"	15.	Conlee Lumber Co., on note of 375.00, 1,262.40	837 40
	April	15. Sundry	103 77
223	"	16. South Branch Lumber Co., on note of 3,324.00	1,024 00
April	16.	Sundry	30 05
"	17.	Geo. Wamhoff & Co., note	365 00
"	17.	Williamson & Libbey Lumber Co., on note of 803.60	400 00
"	17.	M. B. Adwater & Co., note of 1,425.97	725 97
"	17.	S. B. Barker & Co., on note of 850.00	425 00
		For'd	51,592 63
		To amount brought forward	51,592 63
April	17.	Sundry	103 14
"	19.	South Branch Lumber Co., on note of 1,200.00	600 00
"	19.	Heath & Mulligan M'f'g Co., note	120 71
"	19.	Snider, Miles & Baxton, note	110 00
"	19.	Incidentals, labor, etc.	1,120 58
"	20.	C. A. Ficke, on mtg. of 4,000.00	500 00
"	20.	P. C. Hanford Oil Co., note	452 23

April 20.	Sundry		56 75
" 21.	M. B. Adwater & Co., on note of 450.00		225 00
" 21.	South Branch Lumber Co., note		500 00
" 21.	Freight		318 74
" 22.	Sundry		522 19
" 21.	Sundry		314 82
" 22.	T. H. Sheppard & Co., note		300 00
" 23.	Sundries		324 34
" 24.	Sundries		427 02
April 24.	Grupe & Murray, note		283 21
224 " 26.	Sundries, labor, etc.		1,554 51
			59,425 87

Bal. in bank, 517.65.
Bal. in cash, 22.85.

(What follows is in lead pencil.)

April 26.	T. W. McClelland & Co., on acc't	660 80
" 26.	Chris. Mueller, on acc't 352.26 and on note of 1,220.28	1,239 46
		$61,326 13

225 EXHIBIT No. —.

Agent for Quincy white lime, Akron cement, plaster, plastering hair.

Office of George A. Hoagland, wholesale lumber, wholesale and retail dealer; yards on U. P., B. & M. & C., St. P., M. & O. R'y tracks; office, 6th & Douglas Sts.

OMAHA, NEB., 12, 11, 1885.

Bought of Geo. Ott, Davenport, Iowa.

5 cars of glazed wind's,
4 " " doors,
1 " " blinds, at following discounts, del'd at Omaha:
Glazed wind's, 72½%; doors, 65%; blinds, 72½%.
1st car to be shipped Jan. 1st, 1886—shipped Jan. 4th.
2nd " " " Jan. 15th, 1886—shipped Jan. 20th.
3rd " " " Feb. 1st, 1886—shipped Jan. 30th.
4th " " " Feb. 15th, 1886—shipped Feb. 13th.
5th " " " March 1st, 1886—shipped March 1st.
6th " " " March 15th, 1886—shipped March 16th.
7th " " " April 1st, 1886—shipped March 29th.
8th " " " April 15th, 1886—shipped April 1st.
9th " " " May 1st, 1886.
10th " " " May 15th, 1886.

Doors to be about half No. 2, 90 days' time, with acceptance, or 2% off for cash within 15 days from date of shipment.

GEORGE A. HOAGLAND.

Accepted.
GEORGE OTT,
Per GEO. OTT, JR.

Indorsed: George A. Hoagland, George Ott, Jr. 12, 15, 1885.

226 EXHIBIT No. "30."

Agent for Quincy white lime, Akron cement, plaster, plastering hair.

Office of George A. Hoagland, wholesale lumber, wholesale and retail dealer; yards on U. P., B. & M. & C., St. P., M. & O. R'y tracks; office, 6th & Douglass Sts.

OMAHA, NEB., 2, 11, 1886.

Geo. Ott, Esq., Davenport, Iowa.

DEAR SIR: Ship me one car of mouldings at once at 65 & 5, del'd Omaha, Neb., 90 days' acceptance, sizes as follows:

10 M ft. 4005, 4006.
5 " 4009, 4000, 4502, 4533, 4534.
4 " 4071, 4081, 4088, 4089.
3 " 4047, 4045, 4041, 4075, 4504, 4506.
2 " 4010, 4015, 4022, 4024, 4026, 4025.
2 " 4029, 4035, 4034, 4042, 4050, 4049.
2 " 4072, 4094, 4493.
1 " 4036.

¾ to be 16 feet long, balance 12 and 14.

Yours truly,

GEO. A. HOAGLAND.
(WHITE.)

227 EXHIBIT No. "31."

Lease.

This duplicate lease and agreement, made this 26th day of February, A. D. 1877, by and between Rudolph Fuhrman and Charlotte F. Fuhrman, of the county of Muscatine and State of Iowa, of the first part, and George Ott, Louis A. Ochs, Joseph Ochs, of the second part, witnesseth:

That the said first party, for and in consideration of the rents agreed to be paid by the second party, as hereinafter specified, and the covenants herein contained, has leased, and by these presents doth grant, demise, and lease, unto the second party, their heirs and assigns, all that land on which there is glass-sand, fire-clay, lime and sand stone, or coal, which land is situated in sections 13 and 24, township No. seventy-seven (77) north, of range No. one (1) east, of the 5th P. M., which land is now owned and occupied by us, for the full term of twenty years from and after the first day of March, A. D. 1877, and up to the first day of March, 1897, at the rent as follows, to wit:

Ten cents per ton for all glass sand taken away from said land; fifteen cents per ton for all fire clay taken away from said land; twenty-five cents per perch for all lime or sand stone taken away from said land, and a half a cent per bushel for coal taken away from said land by said second parties or persons in their employ or used on said land to the end of the lease.

228 And the said second party, in consideration of this lease and the covenants herein contained on the part of the said first party, hereby covenants and agrees to pay said first party the aforesaid rent in manner and form hereinbefore specified, hereby covenanting that said rents, whether due or to become due, shall be a perpetual lien on any and all —, whether the same be exempt from execution or not; and the said second party further agrees that if any of the rents herein specified shall become due and remain unpaid for the period of — days, then and in that case it shall be optional with the said first party to declare this lease void, and upon giving — days' notice thereof re-enter upon said premises and remove all persons therefrom without process of law, and to proceed with the remedy of forcible entry and detainer as provided by the statute.

And the said second party further covenants that in case immediate possession be not given on forfeiture of this lease or at the expiration of the full term thereof to pay to said first party the sum of ten (10) dollars for each and every day said premises shall be thus withheld; and the said second party further agrees to surrender said premises at the end of the lease or sooner determination thereof in as good condition as reasonable use thereof will permit, damages by the elements excepted.

The within-mentioned rent is to be paid at the end of every month after the stone, sand, fire-clay, and coal is taken away from said land. Said second parties have the right and privilege to enter upon any part of said land for the purpose of quarrying said stone,
229 fire-clay, glass-sand, and digging coal, to drive over any part of said land if found necessary, and to haul the same to the river. Whenever it is found necessary to drive through fences said second party is to put up gates and keep the same closed. It is hereby agreed and understood between said parties that said second parties are to have the sole right to quarry said fire-clay, glass-sand, and digging coal, and the said second — have the sole privilege to purchase the whole of said premises, containing about 147 acres, situated in said sections 13 and 24, 77, 1 E., Muscatine county, Iowa, at seven thousand dollars at any time within three years from this date.

And the said first party agrees and covenants that upon the payment of the rents as herein specified and the fulfilment of the covenants herein made to maintain said second party, heirs and assigns, in the lawful possession and use of said premises until the end of said term.

In testimony whereof the said parties to these presents have hereunto set their hands and seals the date first above written.

RUDOLPH FUHRMAN. [SEAL.]
CHARLOTTE FUHRMAN. [SEAL.]
GEORGE OTT. [SEAL.]
LOUIS A. OCHS. [SEAL.]
JOSEPH OCHS. [SEAL.]

Witness:
F. HEINZ.

STATE OF IOWA, } ss:
Scott County, }

Be it remembered that on the 8th day of March, A. D.
230 1877, before the undersigned, a notary public in and for said county, personally appeared Rudolph Fuhrman, Charlotte Fuhrman, George Ott, Louis A. Ochs, and Joseph Ochs, to me personally known to be the identical persons whose names are affixed to the foregoing lease as parties thereto, and acknowledged the instrument to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] FREDERICK HEINZ.

For value received we, the undersigned, lessors named in the foregoing lease, assign, sell, and transfer said lease and all our right, title, and interest therein by virtue thereof to "The Montpelier Lime and Sandstone Quarry Company," subject to all the conditions and covenants of said lease, said lease conveying certain interests in about 147 acres of land, occupied by Rudolph Fuhrman, in sections 13 and 24, t'p 77, range 1 east of the 5th P. M., in Muscatine county, State of Iowa, and being executed by said Rudolph Fuhrman and wife to us.

Dated January 7th, 1878.

GEORGE OTT.
LOUIS A. OCHS.
JOSEPH OCHS.

STATE OF IOWA, } ss:
Scott County, }

Be it remembered that on the 7th day of January, 1878, before the undersigned, a notary public in and for said county, personally appeared George Ott, Louis A. Ochs, and Joseph Ochs, to
231 me personally known to be the identical persons whose names are affixed to the foregoing assignment as grantors, and acknowledged the same instrument to be their voluntary act and deed.

Witness my hand and seal notarial the day and year last above written.

WILLIAM O. SCHMIDT,
Notary Public, Scott Co., Iowa.

(Endorsed:) Filed for record the 9th day of March, 1877, at 11½ o'clock a. m., and recorded in Book 17 of Lands, on pages 402 & 403. Fees, $1.00, paid. W. M. Kennedy, recorder.

232 EXHIBIT No. "32."

Statement of Amount Paid to the South Branch Lumber Co. on Notes and Accounts since Feb'y 20th, 1886.

1886.			
Feb'y	20.	Paid on note of $900 and $2,446.37; total, $3,346.37	$1,000 00
		Gave new note for balance, $2,346.37.	
"	20.	Paid interest on received note	48 50
"	24.	Paid on note of $450	225 00
"		Gave new note for balance, $225.	
M'ch	1.	Paid on note of $2,290	690 00
		Gave new note for balance, $1,600.	
"	5.	Paid on note of $600	500 00
		Gave new note for balance of $300.	
"	8.	Paid on note of $850	425 00
		Gave new note for balance for $425.	
"	18.	Paid on note of $2,800	800 00
		Gave new note for balance, $2,000.	
"	27.	Paid on note of $1,600	600 00
		Gave new note for balance, $1,000.	
"	30.	Paid on note of $2,459.17	859 17
		Gave new note for balance, $1,600.	
Ap'l	16.	Paid on note of $3,324	1,024 00
		Gave new note for balance, $2,300.	
"	19.	Paid on note of $1,200	600 00
		Gave new note for balance, $600.	
		Paid note of	500 00
		Total cash payments	$7,071 67

233 Coming forward:

April	13.	To transfer of book accounts from—	
		(Amount brought forward)	$7,071 67
		Missouri Valley Lumber Co.	3,807 56
		Traders' Lumber Co.	667 33
		Stewart Chute (?) Lumber Co.	625 82
		Total payments	$2,172 38

Statement of Amount Credited to South Branch Lumber Co.

For stock received since Feb. 20, 1886:

1886.			
March	1.	By invoice Feb. 26th, 10 cars lumber	3,064 58
"	5.	By invoice March 2nd, 5 cars lumber	1,663 50
"	13.	By invoice M'ch 11th, 1 car lumber	136 50
"	15.	By invoice M'ch 12th, 6 cars lumber	1,781 98
"	26.	By invoice M'ch 22nd, 1 car lumber	348 00

April	1. By invoice M'ch 30th, 1 car lumber	237	50
"	10. By invoice April 9th, 5 cars lumber	1,745	10
	(In lead pencil:) Total purchases	$8,977	16

234 In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division.

THE SOUTH BRANCH LUMBER CO.
vs.
GEORGE OTT *et al.*

Messrs. Cook & Dodge, Smith & Helmer, and A. J. Hirschl appear for the South Branch Lumber Co.

Messrs. Bills & Block appear for George Ott, Sr., and J. B. Meyer, substituted assignee.

Mr. Ernst Claussen appears for Charles Hill.

Mr. Bleik Peters appears for Addie Kloppenberg.

Testimony on Part of Plaintiffs.

DAVENPORT, IOWA, *June 3rd*, 1887—a. m.

The deposition of Francis Beidler.

Mr. FRANCIS BEIDLER, a witness on part of plaintiff, being first duly sworn, in answer to interrogatories propounded to him by counsel for plaintiff, testified as follows:

By Mr. SMITH:

Interrogatory 1. State your name, age, occupation, and place of residence.

A. Francis Beidler; secretary of the South Branch Lumber Co., Chicago; residence, Chicago; age, 35.

2. How long have you known George Ott, Sr., the defendant?

A. I think since 1882.

3. From that time until April, 1886, did the complainant
235 transact any business with him?

A. Yes, sir; we were selling him goods from that time until April, 1886.

4. The nature of the goods.

A. Selling him lumber.

5. In the course of that business did Mr. Ott ever make any statements of his financial condition or standing?

Objected to as incompetent and immaterial.

A. Yes, sir.

6. Did you as secretary of the company on its behalf ever communicate with him on that subject?

A. Yes, sir.

7. State whether or not, about the 27th of August, 1883, you wrote him upon that subject; and, if so, please produce a copy of that letter.

A. Yes, sir; and I produce a copy of the letter, which the notary will please mark as Exhibit No. 1 to this deposition.

Objected to for the same reason as the last preceding interrogatory.

8. State whether or not in the early part of 1884 you received from George Ott, Sr., a statement of his financial condition accompanied by a letter. If so, please produce the same.

A. Yes, sir; I did, and here produce what has heretofore been offered as Exhibit B, the letter accompanying the same being dated January 12, 1884, to be copied in full, and further marked as Exhibits 2 and 3 to Mr. Beidler's deposition.

9. State whether or not the complainant sold lumber and material to the defendant Ott after receiving this statement during the year 1884.

Objected to for the same reason as the last two preceding interrogatories.

236 A. Yes, sir.

10. Largely or otherwise?

A. Large quantities?

11. State whether or not — the latter part of December you made any request of the defendant Ott by letter. If so, produce the same and have it annexed to your deposition.

A. Yes, sir; and I herewith produce a copy of the same, dated December 31st, 1884, marked Exhibit No. 4.

It is agreed by the respective attorneys that the defendants object to all evidence tending to show that Mr. Ott made any incorrect statement as to his financial condition, or that the plaintiffs were induced to sell him goods upon the faith of such representations, as incompetent, irrelevant, and immaterial to this suit.

12. State whether or not between December 31st, 1884, and January 17th, 1885, you have received the statement requested.

A. No, sir; we had not.

13. State whether or not on the date mentioned, January 17th, 1885, you again wrote the defendant Ott on that subject. If so, produce a copy of the same.

A. I did, and herewith produce a copy of the letter, which is marked Exhibit No. 5 and annexed hereto.

14. Did you meet the defendant Ott between the dates of those two letters as produced?

A. I can't say as to that.

15. State when and how, if ever, you received the papers herewith handed you, which are marked Ex. No. 18, "F. H.," and Ex. No. 17, "F. H."

A. By mail, the 24th or 25th; in that neighborhood.

16. Of January, 1885?

A. Of January, 1885.

237 17. Prior to receiving those papers had you ever requested the defendant Ott to make you a statement or your firm a

statement showing what he owed other people, but excluding his liability to the South Branch Lumber Co.?

A. No, sir.

The papers are produced and marked, respectively, Exhibits Nos. 6 and 7.

18. Did you ever converse with the defendant concerning the taking of an inventory by him of his assets and the ascertainment by him of his financial condition?

A. Yes, sir.

19. State what he said upon that subject.

Objected to as incompetent and immaterial, and because the time is not confined to any time previous to the assignment *of* Mr. Ott made.

A. On numerous occasions I have talked to Mr. Ott in connection with the taking of an inventory, and have always understood from him and been so informed by him that he was in the habit of closing his business every year by inventory, which was the basis of statements furnished us.

20. Did you have any such conversations prior to the receipt of the statement of Jan'y 23rd, 1885, in evidence?

A. Yes, sir.

21. After the receipt of letter and statement in evidence as Exhibits Nos. 6 and 7 to your deposition did the South Branch Lumber Co. sell the defendant Ott any goods on credit?

238 Objected to as leading and for the reasons as before stated.

A. Yes, sir.

22. State whether or not after the receipt of Exhibits 6 and 7 the complainant sold any goods to the defendant Ott.

Objected to for the same reason as the last preceding interrogatory.

A. Yes, sir.

23. If so, state whether largely or otherwise.

A. Very largely.

24. State upon what knowledge, if any, of the defendant Ott's condition these sales were based and from what sources the same was obtained.

A. They were based upon the statement furnished us under date Jan'y 23rd, 1885, through the mails from him.

25. What, if any, knowledge of the defendant Ott's condition did the complainant have between Jan'y 23rd, 1885, and March, 1886, other than that found in these Exhibits 6 and 7?

A. Only such as were received through the commercial agencies and from personal statements of Mr. Ott to me in connection with his affairs.

26. What modifications, if any, or what statement did he make concerning his affairs at variance with that contained in the statement?

A. They were invariably—they were almost always practically in accordance with such statements.

27. In the sales made to Ott between Jan'y 23rd, 1885, and April 19th, 1866, state what reliance, if any, was placed upon the truth of these statements, Exhibit No. 7.

239 Objected to as leading and because of the improper form of the question has already suggested to the witness the answer he is expected to make.

A. I believe the statement to be correct, and it was the basis and reason for extending the credit that was given Mr. Ott. Further, the statement showed his reliable assets to be far in excess of his liabilities, deemed by us an excellent risk. As shown by such statement, in my opinion, under forced sale, he could have paid his debts at any time without regard to position of real estate and improvements, as shown by such statement.

Defendants move to strike out the last part of the answer as not responsive to the interrogatory, incompetent, and immaterial.

28. What information, if any, or intimation, if any, did the complainant have after the receipt of this statement of Jan'y 23rd, 1885, and prior to April 10th, 1886, of the unreliability or untruthfulness of this statement?

A. We had none.

29. Did you write defendant Ott upon receipt of this statement of Jan'y 23rd, 1885? And, if so, please produce a copy of the letter.

A. Yes, sir; I wrote him acknowledging the statement, and I herewith produce a copy of the letter, dated Jan'y 26th, 1885. The same is marked Exhibit No. 8 to this deposition.

30. State whether or not between October 1st, 1885, and April 8th, 1886, you wrote defendant Ott on the subject of the making of a statement of his financial condition by him; if so, state how
240 many times, and produce copies of such communications.

A. Yes, sir; I wrote October 2nd, 1885; Jan'y 14th, 1886; Feb'y 25th, 1886; March 16th, 1886; March 19th, 1886, and April 7th, 1886, copies of which letters I herewith submit.

The same are marked, respectively, Exhibits Nos. 9, 10, 11, 12, 13, 14.

31. State whether or not you ever received a reply to these requests for a statement of his condition; and, if so, state when after October 2nd, 1886, you first received such a statement.

A. I received a statement dated March 29th, 1886, with a letter attached, dated April 8th, 1886, on the morning of the 10th of April, 1886.

32. Where?

A. At Chicago, through the mail.

33. Was this the first statement of his financial condition and only statement you had after October 2nd, 1886?

Objected to as leading. Objected to putting another question until that question is either withdrawn or answered.

34. State what statements of Mr. Ott's financial condition — received by you or the complainant after October, 1886, and prior to his failure, and produce all of the same.

A. I received a statement dated March 29th, 1886, with letter attached to the same, dated April 8th, 1886, on the morning of the 10th of April, 1886, which is the only statement I received during that period from him directly.

35. State what, if anything, was done by the complainant or you upon receipt of this statement of March 29th, 1886.

A. The statement was in variance with former ones in
241 writing which we had received from him and from other personal information which he had given to me in connection with his affairs. We were scared and alarmed. I took the night train April 7th on the M. & St. P. for Davenport, expecting to arrive in Davenport upon the morning of the 11th, although I could have taken the train Sunday noon upon the R. I. road and arrived in Davenport Sunday evening. It was necessary to change cars at Savannah on the M. & St. P. for Davenport in the neighborhood of 4 o'clock Sunday morning. Prior to getting onto the train I spoke to the sleeping-car conductor and cautioned him to be sure to have me awakened to transfer for Davenport at Savannah, stating that it was very important that I should reach Davenport the next morning. When getting into the car I also cautioned similarly the porter; retired with most of my clothes on so as to lose no time on reaching Savannah. I awakened about 2 o'clock in the morning; fell asleep again, and about 4 o'clock awakened to find the train stopping. I jumped out of my berth, grabbed whatever I had there, and rushed out to find that the train for Davenport had departed. I returned to the sleeper and found the porter asleep, but said it was the first trip he had made on that line and he had missed me. I then went to a hotel in Savannah and inquired as to what means there were for my reaching Davenport that morning. They answered that there was no train prior to Monday morning, the 12th of April, 1886. I might possibly catch a boat going down the river. There was a gentleman residing at Port Byron who was similarly left in the
242 coach. I scraped up an acquaintance with him, and as he was familiar with that section of the country we conjointly went down to the river banks to see if by any means we could reach Davenport without waiting until Monday morning. We tried to induce some fishermen to row us down. They would not put a price on their services for such a purpose, although I stated that I would pay liberally for such services. We then hired a livery to drive to Port Byron, starting in the neighborhood of half past five or six in the morning in a drizzling rain, paying him in the neighborhood of $15 or $16 for the trip. We reached Port Byron about noon, and I immediately engaged of the liveryman there a team to take me to Moline as soon as I finished dinner. In the neighborhood of 1 o'clock we started out, and after making two or three miles the axle broke to the front wheel. I asked him to try to hire a wagon of some farmers near or to make some arrangement whereby he could carry out his arrangement with me. He became angry and wanted

pay for the trip which he had made, which I declined. He then mounted his horses and went back towards Port Byron. I took my satchel and winter overcoat and commenced to walk to Moline, a distance, I believe, of five to six miles. At each town I attempted to hire a livery, but in no case was I able to strike anything in the way of a conveyance. I arrived in Moline foot-sore, tired, and worn as the R. I. train from Chicago, which had left there Sunday noon, passed through on its way to Davenport. Upon reaching Davenport I went to the Kimball House, took supper, then hired a carriage, as
243 I was too tired to walk, as the result of that journey, and drove to Mr. Ott's house. His wife said he was at the Turner Hall, to which place I then went. I asked him to come to my room at the hotel, which he did. I then showed him the statement dated March 29th, 1886, and asked him what such a statement as that meant in view of the ones we had prior thereto, and of the information which he had personally furnished me in connection with his affairs. I then showed him the following papers by way of comparison as between such statement.

The same are marked Exhibits Nos. 15 and 16.

A. Which showed an increase in assets of statement dated March 29th, 1886, from that dated Jan'y 23rd, 1885, of $37,000.00, an increase in liabilities of about $107,000, and in order to arrive at such figures of assets his real property—such as warehouse, factory, dry kilns, and quarry—had been increased to the amount or sum $15,000 as to valuation. He answered me that he could not understand how such a condition could be possible. He didn't make up these statements that Mr. Heesch had, and could explain in the morning. When I desired to know what had become of that $700.00 valuation or loss in the net assets between the 1885, Jan'y, statement and the March 29th, 1886, statement he said that they had lost no money nor yet made any the previous year, and that such a condition could not exist, and requested me to come to the office the next morning; that I should have the freedom of the books, and Mr. Heesch would explain everything.

36. What was his conduct during that interview at the hotel? State what he did as well as said.

244 Objected to as asking for the opinion of the witness as to a man's conduct, and incompetent.

A. He was very much excited and walked the floor most of the time we were in the room together.

Defendant moves to strike out the graphic account of the personal perils by flood and field encountered by the witness in his desperate efforts to get to Davenport as unnecessary embelishment of his testimony and not responsive to the plain interrogatory of the counsel.

37. What, if any, explanation did the defendant then give of the statement of Jan'y 23rd, 1885?

A. He said he didn't know anything about it; that Heesch had made it up.

38. State whether or not, either at that interview or at any other time, the defendant Ott stated or claimed to you that the statement of Jan'y 23rd, 1885, did not include his indebtedness to the South Branch Lumber Co.

Objected to as leading.

A. No, sir; he did not.

39. About how long did this interview in the hotel last?

A. About half or three-quarters of an hour.

40. State whether or not the figures upon these papers, Exhibits 15 and 16, which you say were there at the time of this interview with Ott were read over to or looked over by him.

Objected to as leading.

A. They were both read over by him and looked over by him.

245 Defendant objects to the introduction in evidence of Exhibits Nos. 15 and 16 as incompetent and immaterial, being simply figuring done by the plaintiff himself for his own benefit not pertinent evidence in any respect.

41. Did you meet the defendant Ott the following day? If so, where and about what time, and who were present, if anybody?

A. I met Mr. Ott and Mr. Heesch at Ott's office, up on Front street, about 8 o'clock in the morning.

42. What, if anything, was then said by Heesch or Ott as to who made the statement of Jan'y 23rd, 1885, by Heesch or Ott in the presence of each other?

A. Mr. Ott told Mr. Heesch after my arrival to explain to me about the March 29th statement. Mr. Heesch said that was a statement from the books. I asked him how it came that such an appalling difference existed between that statement and the one of Jan'y, 1885. He stated that all previous statements which we had had were not taken from the books, but were made up by Mr. Ott, and he was ordered to put the figures down in accordance with those shown by such statements. I then in the presence of Mr. Heesch and Mr. Ott asked Mr. Ott if it was possible that these statements had been made up by him in that manner for me. He answered, Yes, sir. I then asked to see the books and began to go through them. They were improperly kept, the records showing merchandise and various other accounts swelled to large proportions, and about the only information I could gather in the short time I went through them was as to debit and credit accounts, indebtedness and liabilities.

246 43. How long did you spend upon the books?

A. In the neighborhood of two or three hours.

44. Did you see Ott again that day?

A. Yes, sir.

45. Was he present during that time you examined the books—all of it?

A. No, sir.

46. How long were you with him in the afternoon, and where?

A. In the neighborhood of two or three hours.

47. What, if anything, was said during that interview as to his creditors or any of them having security for their claim?

A. I asked Mr. Ott if anybody whom he owed had any security whatever, either mortgage or judgment notes. He raised his hands as if to swear or make oath and said nobody whom he owed had other than a plain note or open account against him. He had no judgment notes out; no mortgages nor security of any nature.

48. Did you make any request of him for security? And, if so, state what the conversation was on that subject.

A. I told him that his books showed that he was bursted; that he had secured our goods through false statements; that I had been led into extending him credit based on such false information and asked him to secure the little girl and myself. He answered that would not be right and he would secure nobody, not even the little girl.

49. Who was understood by the term little girl?

A. Addie Kloppenberg.

50. What, if anything, was further said to him about the claim of the South Branch Lumber Co. And state the conversation.

247 A. He said that nobody was pushing him and hoped I would not. I told him that the account had to be reduced; it was too much money; we could not afford to lose it. He said if I would let him alone he would reduce it. I then asked him, in the event he got into trouble, if I did let him alone where I would stand; if he would post me in time to protect myself. He answered that he would pledge himself to communicate with me by wire in time to reach here before he took any proceedings in connection with a failure, if such a condition was necessary.

51. What are those papers I now hand you, marked Exhibits 19 and 20, being a letter dated April 8th, 1886, and attached to it a statement of George Ott, dated March 29th, 1886? Are these the statement and letter you refer to as received April 10th?

A. Yes, sir.

Marked Exhibits 17 and 18.

52. Did you have any talk with Mr. Ott concerning the delay in sending this statement of March 29th? If so, state what the same was.

A. I asked him how it came that the statement was dated March 29th and the letter April 8th, and that I didn't receive it until the 10th. He said he was afraid the statement would scare us, and on that account he delayed in sending it.

53. Did he state why he finally sent it?

A. No, sir; not that I remember.

54. State whether or not you had an interview with the defendant Ott shortly after his assignment.

A. Yes, sir. I was at his house several times after the failure.

248 55. Did you ever have any talk with him concerning the four cars of merchandise that were turned over to the M. & St. P. road?

Objected to as incompetent and immaterial, because the conversation took place subsequent to the assignment.

A. Yes, sir.

56. What did he say on that subject?

A. He said that Mr. White came to him in connection with the indebtedness to the M. & St. P. road on the morning of the assignment and said that we personally would have to loose the amount of that indebtedness if it were not settled, and he didn't feel that it was right that the agent should suffer that loss; so he told him to take the four cars of glass which were on the track and run them over to Rock Island to protect himself.

57. At the time of the failure of Mr. Ott or the making of the assignment how much was he indebted to the South Branch Lumber Co, if anything?

A. $37,191.69.

58. How evidenced?

A. By notes and open account.

59. How much was the open account?

A. $3,955.35.

60. State the number of the notes, their date, time of maturity, and the amounts respectively.

A. 17 notes, as follows:

$1,200, dated Jan'y 23rd, 1886, at 90 days.

$2,300, dated April 16th, 1886, on demand, with interest at 8 per cent.

$600, dated April 19th, 1886, on demand, with interest at the rate of 8 per cent.

$1,100, dated Jan'y 29th, 1886, 90 days.

$1,600, dated Feb'y 13th, 1886, 90 days.

249 $4,730.24, dated Feb'y 16th, 1886, 90 days.

$2,346.37, dated Feb'y 20th, 1886, 90 days.

$225, dated Feb'y 24th, 1886, 90 days.

$1,600, dated March 1st, 1886, 90 days.

$300, dated March 5th, 1886, 90 days.

$425, dated March 8th, 1886, 90 days.

$2,000, dated March 18th, 1886, 90 days.

$2,535.21, dated March 21st, 1886, 90 days.

$1,000, dated March 7th, 1886, 90 days.

$1,600, dated March 30th, 1886, 90 days.

$5,698.82, dated Feb'y 16th, 1886, on June 1st after date.

$3,968.38, dated March 1st, 1886, on June 15th after date.

61. State whether any part of this indebtedness has ever been paid.

A. No, sir.

62. State whether or not the indebtedness upon account and upon notes you have just mentioned was the basis of the attachment suit set up in the bill herein.

A. Yes, sir.

63. Will you please look at the trial-balance book which has heretofore been put in evidence in this case as Exhibit No. 8 to the

deposition of William Heesch and at the sheet headed December 22nd, 1884, and Feb'y 12th, 1885, contained therein? State whether you ever saw these sheets before.

A. I do not think I did.

64. Had you known that such a balance sheet or sheets was or were in existence, made up by the book-keeper of the defendant Ott in course of his business, as such showing the liabilities here shown, would you have extended to the defendant Ott the credits
250 which were extended by you—that is, the South Branch Lumber Co.—during 1885 and up to the failure, in 1886?

Objected to as asking for mere opinion of the witness as to what he would have done, and incompetent.

65. On the basis of the balance-sheet which you have mentioned as well as the statement of March, 1886, given me I would not have trusted him a dollar, neither for myself nor for the firm I represent, nor any other man who would submit such a statement of his affairs.

66. Leaving out all reference to the statement of March, 1886, what, if any, credit would you or the South Branch Lumber Co. have extended to the defendant Ott if you had known such trial balances as these of December 22d, 1884, and Feb'y 12th, 1885, were in existence?

Objected to for the same reason as the last preceding interrogatory.

A. I would not have sold him a dollar's worth.

67. Now, Mr. Beidler, after the receipt of the statement of March 29th, as you say, on April 10th, 1886, did the South Branch Lumber Co. trust the defendant or ship any goods to him?

A. No, sir; they did not.

68. What is the date of the last shipment of goods by the complainant to the defendant Ott?

A. April 9th, 1886.

Cross-examination by Mr. BILLS:

Cross-interrogatory 1. How long have you been connected
251 with the South Branch Lumber Co.?

A. Since 1873, its incipiency.

2. Who is the credit man of that corporation?

A. I am.

3. How long have you been?

A. Something over ten years.

4. Did you attend to the correspondence of the firm?

A. I did considerable of it, the most important correspondence connected with all except the purchase part of the business.

5. How long have you lived in Chicago?

A. I was born there.

6. How often were you in the habit of being in Davenport from the time you sold goods to Mr. Ott?

A. Very seldom.

7. When did you leave home to come here this time?
A. June 2nd, on the 12.40 train on the R. I. road.
8. Did your attorney, Mr. Smith, come with you?
A. Yes, sir.
9. You have been over this matter with him—the matter concerning what you have testified to a good many times?
A. No, sir.
10. Talked it over on the way down?
A. We talked over this case.
11. Did you have any accident or trouble about getting here this trip?
A. Not that I remember.
12. Did you attribute that to the fact that your attorney was with you?
A. No, sir.
13. About how much did Mr. Ott owe your house in Jan'y, 1885?
A. About $33,000.
14. What shape was it in—in notes or accounts, or both?
252 A. About $27,000 in paper and the balance in open account.
15. Had you ever visited Mr. Ott, say, prior to Jan'y 23rd, 1885?
A. I think not.
16. Had any one from your house visited him?
A. A salesman may have visited here; I think nobody else.
17. Can you tell about how much Mr. Ott owed your house in Jan'y, 1884?
A. About $14,000.
18. What shape was that in?
—. All except about $370 in notes.
19. You had no statement from Mr. Ott between Jan'y, 1884, and April, 1886, had you, as to his financial condition?
A. Yes, sir.
20. You say you did have statements?
A. I had a statement.
21. What time? A statement as to his financial standing?
A. Jan'y 23rd, 1885.
22. Where is that statement? Did your house during all this time you were dealing with Mr. Ott have the usual connection with commercial agencies?
A. Yes, sir.
23. How many agencies did you connect with?
A. Three.
24. Are any of those agencies represented in Davenport?
A. I believe they all are.
25. Did you get reports from them as to the standing of Mr. Ott?
A. Yes, sir.
26. Did you know, in Jan'y, 1885, about the extent of business Mr. Ott was doing in Davenport?
253 A. I was not so familiar with his business, but I knew the amount he did.

27. You say you don't think you had been prior to Jan'y 23rd, 1885?

A. At Davenport, but not to his place.

28. Had you been at his office?

A. I think not.

29. How often was Mr. Ott in Chicago, during the time you dealt with him, at your place of business?

A. During 1884 and 1885, very frequently.

30. As often as once a month?

A. I should say he would average that.

31. Did he sell goods to you as well as buy of you?

A. Some goods in latter years.

32. Is it not a fact during the time you dealt with him, from 1882 down to his failure, that you sold him goods to the amount of over $180,000?

A. Something in that neighborhood; yes, sir.

33. Did you take any pains to learn how large a business he was doing?

A. Only from what he told me and general reputation made him do—general reports.

34. Did you know that he bought lumber and goods from other parties besides from you?

A. To a very limited extent, I understand.

35. Did you know that he had a factory here and employed 120 or '30 men all winter?

A. I know he had a factory here, but how many men he employed I did not know.

36. Did you have any idea how large a business he did at the factory?

A. In dollars and cents—no, sir.

37. Now, when you received this statement of Jan'y 23rd, 1885, showing that he owed bills payable $36,798.69, and you knew
254 that he owed due bills payable to the amount of over $27,000, did it occur to you that did not include all his indebtedness in that shape?

A. He frequently told me that he owed practically nothing, except what he owed us outside of our house from the date of the adjustment of this indebtedness to the Schricker estate.

Defendant moves to strike out the answer as not responsive to the question.

38. I ask you again, when you received this statement of Jan'y 23rd, 1885, showing that he only owed bills payable $36,798.69 and you knew that he owed you bills payable over $27,000, whether it occurred to you that that could not include all his indebtedness aside from yours?

A. No, sir.

39. It didn't occur to you, you say, in whose handwriting were the letters which you have received during all these years from Mr. Ott?

A. Mr. Heesch's, I believe.

40. Have you ever received any letters in the handwriting of Mr. Ott himself?

A. I think we have.

41. You think you have?

A. Yes, sir.

42. Where are they?

A. If we received any they are at home.

43. Are you willing to swear that you have ever received a single letter written by him?

A. I don't swear to any; I don't positively know.

44. If you have any such letters will you produce them?

A. If I am given time; yes, sir.

45. Did you know during this time that you were dealing with Mr. Ott that he was a German and unable to speak the English language with any degree of accuracy?

255 A. He always spoke it well enough to tell me how much he had and how little he owed.

Defendant moves to strike out the answer as irrelevant, impertinent, and irresponsive, and repeats the question.

46. During all this time you were dealing with Mr. Ott did you know he was a German and unable to speak the English language with any degree of accuracy?

A. I know he was a German and spoke English somewhat brokenly.

47. Did you know he was not able to write in the English language?

A. No, sir; I did not.

48. Did you know that he was not able to read the English language to any extent?

A. I have seen him read it and heard him read it.

49. I repeat the question. Did you know that he was not able to read English writing to any great extent?

A. No, sir; I did not.

50. Did you know that he was wholly unfamiliar with book-keeping in all its branches?

A. No, sir.

51. Did you suppose that he was a book-keeper or knew anything about book-keeping from your knowledge of him and his business?

A. I didn't assume that he was a book-keeper; never supposed that he was one. I supposed he had some knowledge of books, running the business that he did.

52. Who are the other business men connected with the South Branch Lumber Co. who transacts the business besides yourself?

A. B. F. Furgusson is treasurer.

53. Well, who else is there in there who attend to the business in Chicago?

256 A. You mean the employees of the company?

54. The officers—those who manage the employees.

A. The president of the company is not an active member in it. We have a book-keeper, who has charge of the book-keeping depart-

ment; a cashier, Mr. W. S. Fox. We then have men in charge of the front office, the order book, and such correspondence. The larger part of the correspondence which I do not attend to, who attend to it subject to my direction--T. S. Howell. We have a shipping clerk in charge of the shipping department—M. F. Cronin; a foreman of the yards by the name of H. M. Gunton. These are the heads of the various departments about the office and yards.

55. When were you at Ott's place of business prior to April, 1886?

A. I was there once, I think—not more than that—prior to that time; I could not state the date.

56. Did you see Mr. Ott generally when you came to Davenport?

A. I think I was here but once prior to April, 1886; at that time I saw Mr. Ott.

57. You mean at his place of business?

A. Yes, sir.

58. Were you at Davenport at other times besides these times?

A. I think, several times.

59. Did you see him when you were here?

A. I think not.

60. You think not?

A. No, sir.

61. Did you try to see him?

A. I don't think I was here except once during the period that we were dealing with Mr. Ott, prior to April, 1886.

62. You have been here several times since his failure?

A. Yes, sir.

257 63. When were you here last before this time?

A. The 18th of July, 1886. I withdrew that answer. I cannot answer positively; I think it was on the 18th of July, 1886; I may have been here since that, during the winter. I think I was here once.

64. Did you spend one Sunday here two or three months ago; go up to Mr. Ott's house and stay most of the day with him?

A. Yes, sir; I think I did.

65. What was your business with him?

Objected to as not cross-examination.

A. General talk in connection with his case.

66. Did you want to pump him for evidence? Was that the object of spending the day with him?

Objected to for the same reason as the last preceding interrogatory.

A. Not particularly so.

67. Was it a friendly visit?

Objected to for the same reason as the past two preceding interrogatories.

A. A visit for information.

68. Did you go expressly *go* to see if you could get something out of him that would help you in this suit?

Objected to as not cross-examination.

A. No, sir.
69. What did you go there for?
A. General information in connection with this case.
70. How many hours on that Sunday did you spend at his house?
A. At the outside, not over an hour.
71. Not over an hour?
A. I think not.
258 72. Did you see him anywhere else during the day?
A. I think not.
73. You swear you were not there to exceed an hour and didn't see him anywhere else during the day?

Objected to as immaterial and not cross-examination.

A. I think not.
74. Who instructed or requested you to see Mr. Ott at that time to see what you could find out?
A. Nobody.
75. You did it on your own motion?
A. Yes, sir.
76. Is that the only day you have spent with him since his failure, for that purpose?
A. No, sir.
77. When was the other one?
A. I haven't spent any days with him for that purpose.
78. When have you had interviews prior to the one we have spoken of this Sunday?
A. I met him in June and July, 1886.
79. Where?
A. At his house and at Turner Hall.
80. What was your business with him then?
A. I wanted to see him in connection with this case. I wanted information.
81. What kind of information were you seeking after?

Objected to as not cross-examination.

A. Anything that might be developed in conversation with him.
82. When you came here in April, 1886, you say you asked him to give you a mortgage on the property to secure you, do you?
A. Yes, sir; I wanted a bill of sale or mortgage—any security which he might see fit to give.
259 83. Did you ask him to give you a confession of judgment?
A. Yes, sir.
84. He refused, did he?
A. Yes, sir.
85. Did you swear to the petition for attachment in this case?
A. I think I did.
86. You stated in this petition that said Ott had disposed of his

property, in whole or in part, with intent to defraud his creditors. What property did he dispose of with intent to defraud his creditors at that time that you know of?

A. What time? 1887?

87. The time this petition was sworn to.

A. He disposed by chattel mortgage to his grandchild and to Charles Hill; to the M. & St. P. road to secure their accounts; a draft to McClelland to pay his.

88. When did you first find out that he had made these mortgages to the little girl, Addie Kloppenberg, and to Mr. Hill?

A. The time of the assignment.

89. Did you come here at that time?

A. Yes, sir.

90. Who told you about the mortgages?

A. We learned it around town. I gained that information in going around town. Everybody seemed to know all about it. It was the general subject of discussion.

91. That is what induced you to sue out the writ of attachment?

A. That, in connection with general crookedness. This statement that we received proved to be so—was admitted to be so.

92. Were you not induced to give Mr. Ott a large credit simply by the fact that you sold him large quantities of very poor goods at very large prices?

A. No, sir.

260 93. Did you or did you not sell him large quantities of a very low grade of lumber?

A. I did not.

94. You did not sell him large quantities of a very low grade of lumber?

A. No, sir.

95. Did you see any of your lumber in his yard at the time of his failure?

A. No, sir; I did not.

96. Do you know that some of your lumber was there in quite large quantities that could not be sold for half what you charged Mr. Ott for it?

Objected to as immaterial and not cross-examination.

A. No, sir; nor do I believe it.

97. Do you know what the lumber was; did you inspect it when it was shipped?

A. I am familiar with our lumber there.

98. Answer my question. Do you know what the lumber was, and see it when it was shipped?

A. Not each car-load; in a general way, yes, sir.

99. Did you help to load it?

A. No, sir.

100. Did you see it loaded?

A. Sometimes—quite frequently.

101. Were you in the yard when it was loaded?

A. Frequently.

102. How much did you see loaded?

A. I could not state definitely as to that.

103. Will you swear you saw a tenth part of it loaded?

A. No, sir; I will not.

104. Did you ever see it after it arrived here in the yard at Mr. Ott's?

A. He never raised any objections to it; always pronounced it good.

261 105. Did you ever see it after it arrived here, in the yard of Mr. Ott's? Please answer the question without the introduction of voluntary things I didn't ask you for.

A. Once when I was here I saw some lumber of ours here; yes, sir.

Adjourned till 2 o'clock p. m.

106. I call your attention to the letter of October 2nd, 1885, and ask you who wrote the letter, if you know.

A. Who wrote the copy of the letter?

107. Who wrote the original letter.

A. It was dictated by me, I believe, as long as it is signed by me.

108. I call your attention to the following language in said letter of October 2nd; 1885, to wit: "In the early part of this year we made a request of you for a written statement showing assets and liabilities, itemized, but same was never furnished us—at least we are unable to find such a record—and, as we recollect, think you omitted to do so." Please state whether or not at that — you had the statement of Jan'y, 1885.

A. What is the date of that letter?

109. October, 1885.

A. Yes, sir; we had it.

110. How did it happen you wrote the letter stating you never received it?

A. I can't say as to that; doubtless neglect, trusting to memory.

111. If you had been giving him credit from Jan'y, 1885, up to October, 1885, on the faith of that statement, how does it happen you forgot you ever received any such statement?

A. For the time being I probably had forgotten it; my memory is poor in that connection, except as to the request.

112. Did it make so little impression on your mind that
262 you forgot in October that you had ever received such a statement?

A. My memory is not clear in connection with that letter. I am unable to account for that clause in the communication. I knew the fact in 1885 that such a statement was furnished us, and the statement was a very good one. I never had any idea but what Mr. Ott was solvent until I got the statement in March, 1886, or April, 1886.

113. Do you mean to state that his statement of March 29th, 1886, shows that he was at that time insolvent? Is that what you mean to swear to?

A. I so considered it.

114. Does that statement show his liabilities to be greater than his assets?

A His convertible assets far less than his liabilities or realizable assets. I never counted his real estate, mill, and warehouse as assets equal to that of his merchandise and accounts which can always be turned into money.

115. In making that statement would there be anything wrong in Mr. Ott putting in his factory and warehouse at what they cost him?

A. Most certainly there would if they were not worth it.

116. Is it not usual for business men who make statements of that character to put in their real estate in the way of storehouses, warehouses, and factory at about what they cost them?

A. No, sir; I think not.

117. You never knew of a case of that kind, did you?

A. Not where a man wanted to make a statement based on facts as to what he had.

263 118. If Mr. Ott overstated the value of his factory and other real estate at any time it is a very easy matter for you to find out, verify, the statement to see whether it was true?

A. If I had known as much about the character of these statements prior to the receipt of the one in April, 1886, as I did at that time, I certainly should have investigated it much more thoroughly than I did.

The answer is objected to by the defendant as not responsive to the question. The witness will please answer the question.

119. State whether or not it was an easy matter for you to find out whether Mr. Ott's estimate of the value of his real estate was correct or not.

A. I could have found that out; yes, sir.

120. Did you make any attempt to do so?

A. I think not. The merchandise and accounts receivable, as shown by that statement, were always ample to take care of his indebtedness. The Jan'y, 1885, statement is the one I refer to.

121. When you came here, about April 10th, 1886, you learned that the statement of Jan'y 18, 1885, was not correct, did you?

A. I became satisfied that it was not; yes, sir.

122. That was one of the reasons for your suing out the attachment after the assignment, you said, I believe?

A. The fact that the statements were false, in my opinion, was one of the reasons; yes, sir.

264 123. Why didn't you sue out the attachment when you were here about the 10th of April, 1886, when you found out?

A. I was in hopes Mr. Ott could get along and we might get our account without legal measures being taken.

124. Did he tell you at that time that he thought he would pull through?

A. Yes, sir.

125. Mr. Heesch, the book-keeper, gave you any information you asked about the books at that time?

A. Yes, sir; he told me the statement of Jan'y, 1885, that had been sent us, was a false one.

Defendant moves to strike out the last part of the answer as not responsive to the question.

126. Did he tell you at that time that Mr. Ott probably never saw or never knew anything about the book called the trial-balance book?

A. No, sir.

127. Didn't tell you what?

—. No, sir.

128. Do you swear that Mr. Heesch told you it was a false statement?

A. Yes, sir; language to that effect.

129. Well, did he say it was a false statement?

A. I would not swear that was just the language he used; that was what it implied.

130. Didn't he tell you this, that that statement did not include the liabilities to your house—was not correct in that respect?

A. No, sir; he did not.

131. Do you — that if the liabilities to your house were added to that liability in that statement of Jan'y, 1885, it would be substantially a correct statement of the liabilities?

A. I think it would not; on the contrary, I think it would be false then.

132. Would not it be substantially correct?

265 A. I think not.

133. How much would it lack of it? Now, state your knowledge and not guessing; if you don't know you can say so.

A. A great deal.

134. How much?

A. I am not prepared to state the exact difference.

135. The liabilities in that statement of Jan'y, 1885, amount to $64,321.77. Now, if you add $33,000 to that——

A. What is the date of that statement?

136. Jan'y 23rd, 1885. Now, if you add $33,000 to that, the amount of his liabilities to your house, it will be $97,321.17. If Mr. Ott owed more than that at that time you will please state how much more, to your knowledge.

A. I am unable to state what he did owe. In accordance with your statement our indebtedness the first of Jan'y, or the indebtedness to us on the part of Mr. Ott, was about $33,000; the first of Feb'y, $30,000. This statement is dated Jan'y 23rd; if our indebtedness the first of Feb'y were added to the indebtedness covered by his statement the total would aggregate about $94,000, out of which $17,000 is secured upon real-estate property, leaving a net outside of such secured indebtedness of $77,000. His statement of Jan'y 23rd, 1885, showed accounts and bills receivable, stock of glass, glazed sash, doors, blinds, etc., lumber, and stock in process of manufacture, all of which are reliable assets and can be converted into money at a very slight sacrifice, if properly handled, of $75,000, or in that

neighborhood. No such basis of figures can be arrived at in connection with the 1886 statement.

137. Do you mean that his statement of March 29th, 1886,
266 shows a less amount of what you call convertible assets than the statement of Jan'y 23rd, 1885, shows?

A. Compared to the indebtedness.

138. The indebtedness shown in the statement of 1886 includes the indebtedness to your house, does it not?

A. I understand it does, as I always understood every statement that was furnished us did.

Defendant moves to strike out the last part of the answer as not responsive and volunteered statement of the witness.

I believe that is all.

Redirect examination by Mr. SMITH:

Redirect interrogatory 1. Please give us the amount of goods sold by your concern to the defendant Ott in 1885 and 1886, up to the time of his failure?

A. In 1885, $54,766.83; in 1886, $13,171.39.

2. You were asked on cross-examination if it did not occur to you, on receipt of the statement of Jan'y 23rd, 1885, that the $36,000 indebtedness as shown by that statement could not include your indebtedness. Had you had any talk with Mr. Ott about that time as to the extent of his indebtedness to other concerns?

A. Yes, sir.

3. If so, state what he said in that respect?

A. On several occasions he said that he owed very little outside of his indebtedness to our company, and that no other house carried him, and he paid promptly outside indebtedness as it matured, buying on only regular terms.

267 4. In answer to the question of cross-examination as to your knowledge of conveyances which you deemed fraudulent, you mentioned the Hill mortgage, the mortgage to Addie Kloppenberg, the transfer of the cars of glass to White on the railroad, the payment of McClellan & Co., which I recollect. Did you know at that time of any other transfers of his property having been made?

A. Yes, sir; the assignment which brought me here.

5. Did you lay all the facts within your knowledge, just as they were, before your counsel before commencing attachment proceedings?

Objected to as incompetent, immaterial, and leading. Question withdrawn.

6. State whether or not before commencing the attachment proceedings you laid the facts within your knowledge before counsel.

Objected to for the same reason as the last preceding interrogatory.

A. Yes, sir; entirely, and acted on their advice in all proceedings of that nature.

7. What advice, if any, did you have as to the right of commencing attachment proceedings?

Objected to as incompetent and immaterial.

A. I was advised that I had such a right.

8. You were asked whether the 1886 statement showed the defendant, Ott, was insolvent. What is the balance which it apparently shows of assets over liabilities?

A. $23,588.11.

9. In making up the assets, what is the quarry and home-
268 stead put in at?

A. The quarry is put in at $14,000, the residence at $16,000.

10. Making a total of——

A. $30,000.

11. What other real estate or non realizable assets are included in that statement?

A. The warehouse, $16,000; factory, machinery, and grounds, $49,146.00.

12. Deducting the apparent surplus of assets given by the statement from the total assets as shown, what is the deficiency which appears by this statement of realizable assets under his liabilities?

A. $59,302.84. The accounts receivable and bills receivable aggregate $14,014.1–; the glass, sash, doors, blinds, etc., aggregate $47,176.77; lumber, moldings, stock in process of manufacture aggregate $35,460.00; the teams, wagons, etc., aggregate $2,740.00, making a total of realizable assets, as shown by that statement, of $99,390.95. Bills payable on such statement show $108,310.02; accounts payable, $46,138.82, making a total liability unsecured, as far as statement shows, — $154,448.84. Deducting the total realizable assets as shown by such statement, it shows a net deficiency of $55,057.89. The mortgage on factory of $10,000 and the mortgage on warehouse of $3,500, with that on residence of $3,000, in arriving at such deficiency I did not figure, because of their security as against such real estate, as shown by such statement, which I also omitted.

13. Now, Mr. Beidler, suppose on the 23rd of Jan'y, 1885—this statement of 1885—the actual bills payable liability of Mr. Ott was $72,167.16, would the amount of bills payable liability due
269 your concern, plus the amount of bills liability set up in that statement, make that sum or would there be a discrepancy? If so, how much?

A. The discrepancy would be over ten to twelve thousand dollars.

14. Are you able to-day to state the exact amount of bills payable liability from Mr. Ott to your firm on the 23rd day of Jan'y, 1885?

A. Yes, sir; on the 23rd of Jan'y, 1885, $24,025.28.

15. Now, you add to the amount shown by the statement the amount due your firm, what is the total?

A. The amount of bills payable, as shown by the statement of Jan'y 23rd, 1885, is $36,798.69. The amount of bills payable which we held on him same date was $24,025.28, aggregating a total, if it was desired, of $60,823.97.

16. Now, assuming that the actual bills payable liability was that $72,167.16, what would be the correct discrepancy?

A. $11,343.19.

17. You were asked if it was usual for manufacturers, etc., to put in their real estate at or about cost. Is it not, on the other hand, usual for manufacturers to deduct from the value of their plant a percentage for wear and tear?

A. Yes; and in connection with machinery it is usual to deduct a very large percentage on account of the improvements that are yearly taking place in machinery, with a view to saving labor, which enters into the cost to a far greater extent than the cost of the machinery itself.

The defendant moves to strike out all except the word yes, which was the answer to the leading interrogatory of plaintiff's counsel, as not responsive to the question.

270 18. Can you state the amount of open liability of Mr. Ott to your firm Ja'y 23rd, 1885?

A. Yes, sir; $6,401.91.

Take the witness.

Recross-examination by Mr. BILLS:

Recross-interrogatory 1. In these statements which Mr. Ott furnished to your house did he not include among his liabilities the several mortgages on his factory, warehouse, and homestead?

A. The mortgages are shown, I believe, on all such statements?

2. Now, it is your idea, isn't it, that if he included these mortgages in his liabilities, and the factory had cost him say $45,000 in cash, he could not include that at all in his assets?

A. No, sir; but I don't consider such real estate and factory as of the same value in the payment of indebtedness as merchandise and stock which could be sold and realized for as no real estate can ordinarily.

3. That is a matter, then, which affects the estimate which you would place upon the statement, instead of the correctness of the statement, is it not?

A. No, sir; they both affect it.

4. How would you, in making such a statement as Mr. Ott made, include among his liabilities the $10,000 mortgage on his factory? What kind of an entry would you make of the factory among his assets?

A. I would estimate it at what it was actually worth and not what it cost.

5. Then, it is simply a question of opinion between
271 & 272 you and Mr. Ott as to what the factory was worth in Jan'y, 1885?

A. No, sir.

6. What is it, then?

A. What does it mean?

The question is objected to as being absolutely indefinite and blind.

7. As your counsel has suggested to you that you do not understand it, although you didn't think of it before, I will explain to you in this way: If Mr. Ott included the mortgage on his factory of $10,000 among his liabilities, is it your opinion that it would be right to enter his factory for what it was worth at that time among his assets?

A. Yes, sir.

8. Then, the only difference between you and Mr. Ott as to the correctness of that statement is the valuation put upon the factory as to that item?

A. What statement?

9. The statement of Jan'y 23rd. What is the difference? The entrance of the factory at so many thousand dollars, wherein was he wrong, in your opinion? You say he had a right to enter it only for what is was worth. Please explain.

A. It is entered at more than its actual value. Had this statement of Jan'y 23, 1885, been correct as to the indebtedness and assets outside of his real-estate valuations I would have then known sufficient not to have sold him any goods.

10. That does not answer my question, and if you do not know it your attorney does and ought to tell you. I now confine my question to the two items, one in the liabilties and one in the assets. I ask you again to confine yourself to that one item of the
273 factory among the items of his assets—what there is wrong about the matter in which Mr. Ott entered it?

A. It is, in my opinion, much too high.

11. How much too high?

A. I should say about half.

12. Then, I ask you again, if it is not true as to that one item that the only difference between you and Mr. Ott is one of value and valuation as against the factory, the value of the factory as entered in that statement?

A. Yes, sir.

Statements of counsel intended to direct the witness are objected to as improper in any event.

13. Now, I ask you, did you ever make any suggestions to Mr. Ott that these statements made to you in 1884 and 1885 were incorrect as to the principles on which the statement was made?

A. No, sir.

14. You mean to say now, then, that the only error in regard to the real estate which he put in there, in your opinion, was the error as to the valuation; that he gave it too high; was that correct?

A. As far as the real estate goes, I think it was.

15. You mean to swear now, then, that you would not have trusted him at all, and didn't intend to trust him at all, except upon the faith of what you call his convertible assets?

A. I mean to say that if his assets, which I term convertible ones, had not been sufficient to pay his debts irrespective of real

estate valuations I would not have extended him credit nor any other man.

16. You mean to swear that you never gave a man any
274 credit upon the faith of the real estate he owned?

A. It depends upon where the real estate is he owns.

17. Please answer my question. Do you mean to be understood as swearing that you never gave a man any credit upon the faith of the real estate he owns?

A. I do not. If the man owns unencumbered real estate somewhere — it can be disposed of, and real estate investments are active, I would consider it in deciding as to a credit risk, but not if such real estate is a sash and door factory, but such property as can be sold and realized upon to a reasonable percentage of its actual cost.

18. Then, when Mr. Ott did include in his two statements of 1884 and 1885 to you large amounts for factory and warehouse, why didn't you tell him that was not a proper statement, that you didn't give credit upon such assets?

A. His accounts receivable and bills receivable, stock on hand, and reliable assets made him good on that statement without considering any real estate, and had they been true he would not have failed as he did, in my opinion.

19. Will you please give me the amounts of his assets down in the statement of Jan'y 23rd, 1885, rejecting the real estate?

A. The stock in process of manufacture, $7,000; lumber, $26,547.81; teams, wagons, harnesses, and office fixtures, $2,150.27; stock of glass, glazed sash, doors, blinds, $29,720.55; accounts and bills receivable, $11,157.82, making a total of what I would term realizable assets of $76,576.45, as against liabilities unsecured as
275 shown by such statement, bills payable, $36,798.69; accounts payable, $10,522.48, or a total of $47,321.17, showing a surplus of realizable assets over unsecured liabilities as shown by such statement of $29,255.28—an excellent statement.

20. Then if you include in his assets what his factory had cost him over and above the mortgage on it, would it not be more than the balance of his assets over and above liabilities by excluding the real estate?

A. His statement shows a surplus of assets over liabilities, referring to the statement of Jan'y 23rd, 1885, of $92,955.28. According to the basis of figures covered by the reply to the previous questions put me, his surplus of his realizable assets over unsecured liabilities showed $29,255.28 with the assets as shown by such statement, $14,000 for warehouse, $39,700 for factory, dry kilns, machinery and grounds, $16,000 for residence, $11,000 for quarry, making a total of what I term unrealizable assets as covered by such statement of $80,700, and indebtedness against such realizable assets as shown by such statement are mortgage on factory of $10,000, on warehouse $4,000, and on residence $3,000, making a total indebtedness as against such unrealizable assets of $17,000, leaving their net value as in such statement $63,700; adding to such $63,700 the excess as covered by such statement of realizable assets over and above

unsecured indebtedness would show to the cent $92,955.28, the excess as shown by such statement of assets over liabilities.

21. Now the question I want you to answer is if it is not
276 true that in making your estimate of his statement of Jan'y, 1885, you excluded $63,700 on the real estate as not available assets?

A. The statements show such assets for themselves. I exclude nothing as covered by such statement, but do not deem such assets aggregating $80,700 as of the same value towards the payment of indebtedness as to the same amount of assets in bills and accounts receivable and stock which can be turned into money on short notice and at very nearly full market price even though forced to sell.

22. Now will you please answer my very short question? You have made your speech. Is it not true that in putting your estimate upon the statement of Mr. Ott to you of Jan'y 23rd, 1885, you excluded from the assets $80,700 of the real estate?

Objected to as being repeated when the witness has already answered the question plainly and squarely in the beginning of his last answer.

A. I will reply to it as I did to the former question.

23. Will you state whether or not you excluded $80,700 in your estimate from the real estate in that statement?

A. I exclude nothing; the statement shows for itself.

24. I will ask you whether you excluded in the estimate which you placed upon the statement $80,700 of the real estate as not being available assets?

A. No, sir; I did not exclude them.

25. You swear to that, do you?

A. I am under oath.

26. State the amount of the estimate in the statement of Jan'y, 1885, placed upon the factory by Mr. Ott.

277 A. $39,700—factory, dry kilns, machinery, and grounds.

27. What is the amount of the mortgage upon it?

A. $10,000.

28. What is the balance?

A. $29,700.

29. Do you exclude that in making your estimate upon the available assets of Mr. Ott?

A. Yes, sir.

29½. Then I have finally got around to the question that I first put to you, whether or not the amount which you excluded from the estimate on the factory will not exceed the $29,255.28 which you find the balance of available assets in that statement?

A. No, sir; you have got the same replies to every similar question you put to me.

30. Is $29,700 more than $29,255.28 or less?

A. I will have to have you repeat the question.

31. Is $29,700 more than $29,255.28 or less?

A. I guess it is more.

32. Have you ever examined the factory and machinery in it so that you are able to state what the factory and machinery are worth?

A. I have been to the factory.

33. Will you answer the rest of the question?

A. I can give my opinion as to its value.

34. Well, in the first place, do you know what it is worth?

A. No man knows what it is worth until it is put up for sale.

35. I didn't ask you what no man knows. Do you know what it is worth?

A. I know what I think it is worth.

36. Do you know what the machinery is worth in that factory?

A. I have my opinion as to its value.

37. Did you ever purchase such machinery?

A. No, sir; I did not.

278 38. Do you know what it cost at the manufacturers'?

A. I know what the values are on such machinery.

39. Do you know what it cost at the manufacturers'?

A. No; I have never manufactured any machinery.

40. Did you ever buy any from the manufacturers?

A. No, sir.

41. Do you mean to be understood as saying or intimating that real estate in Davenport is not worth anything?

A. It seems to be worth very little; it has sold so cheap lately.

42. What do you refer to as being sold so cheap?

Objected to as very immaterial, and witness need not answer unless he wants to.

A. I decline to answer.

43. Do you decline to answer because your counsel told you it was not a proper question or because you do not know?

The question is objected to as immaterial, not cross-examination, and intended to offend the witness.

44. Do you want to answer it, Mr. Beidler, or not?

A. I decline to reply to it.

45. You stated to the cross-interrogatory which I put to you when I asked you whether or not you excluded the real estate in the assets of the party who was seeking credit at your house it depended upon where the real estate was. What did you mean by that?

A. If a man had a large structure in a city that he could turn around and borrow money upon from loaning institutions I
279 would say of value as an estimate of credit. I don't think that very much could have been borrowed on this property in addition to its present indebtedness.

46. Have you any reason to suppose that Mr. Ott did not consider that real estate of his at about the value that he put it into the statement at?

A. No, sir.

47. If you had about $20,000 worth of machinery into a factory and it was all improved, the latest improved machinery and in first rate order, and most of it had not been used over two years, would

you make a very large reduction in putting it in, reduce the value of it as assets?

A. I would reduce the value every year in making up a statement.

48. Do you know whether or not the machinery in the factory is in first-class order and improved machines?

A. Some of it is improved.

49. Is not most of it improved and in first-class order even to-day?

A. My impression is there is a large part of it old machinery.

50. Did you ever look at the warehouse included in the statement there—go over it and look at it?

A. Yes, sir.

51. Do you think that estimate of it that he put in the statement of Jan'y, 1885, is a large estimate of a building of that size and ground of that size located at the railroad side in Davenport?

A. Yes, sir.

52. Do you believe you could put the brick up and the inside work for less than $14,000 to-day or any time within the last ten years?

A. Yes, sir; I think I could.

280 53. Can you put up a building like that in Chicago for $14,000?

A. I think you could; yes, sir.

54. Do you know how much ground he has with the factory?

A. I know it is quite a piece.

55. Do you know what it is worth without anything on it?

A. I understand not very much.

56. Do you want to state under oath that you don't think it is worth from $2,500 to $3,000 without anything on it?

A. No, sir. I don't think it would sell for that.

57. Do you know what the property is assessed at?

A. No, sir.

58. Have you ever taken any particular pains to inform yourself as to the value of real estate in this city of Davenport?

A. In conversation with people in general; yes, sir.

59. Where did you get the figures that you gave in regard to the amount of goods you sold Mr. Ott in 1885 and 1886?

A. I got them from our books.

60. Did you read them from memoranda?

A. Yes, sir.

61. Who made the memoranda?

A. I did.

62. You mean you took them from your books of account?

A. Yes, sir.

63. Have you the books here?

A. No, sir.

64. Who made the entries?

A. The book-keeper.

65. What is his name?

A. W. S. Fox.

66. Where did you get the figures in regard to the amount Mr. Ott owed you on the 23rd of Jan'y, 1885?

A. From the books.

67. Who made those entries in the book?

A. I suppose he did or his assistants.

281 68. Where did you get the copies of the letters, which you have introduced, written by yourself to Mr. Ott?

A. From the letter books on file in our office.

69. Who selected them?

A. I did.

70. Did you go over all the letters you have written to Mr. Ott?

A. A great many of them; not all of them.

71. Did you select such as suited you and reject the rest of them?

A. I selected every one that referred to a request for a statement.

72. Was that all you were looking for in examining the letters?

A. Yes, sir.

73. Didn't you find anything that would benefit our side of the case that you didn't bring down here?

A. I don't remember anything of the kind.

74. You kept out those you wanted to introduce and brought copies of them. Did you submit them to your counsel before you brought them down?

A. Yes, sir.

75. Did he approve of them?

A. I don't know whether he did or not.

76. Did he examine all the other letters that you left at home?

A. No, sir.

77. How did you know there were not some other letters there that would be material if your attorney did not examine them?

A. I decided that question myself for myself.

78. Did you make the copies which you introduced?

A. No, sir.

79. Are you sure these dates are all correct?

A. Yes, sir.

282 80. Did you compare them with the originals?

A. Yes, sir.

81. Yourself?

A. Yes, sir; I took the precaution to read over every copy that is here and see that there could be no mistake.

That is all.

That is all.

(Signed) FRANCIS BEIDLER.

283 Jacob Beidler, pres. B. F. Ferguson, treas.
Francis Beidler, sec.

Office of South Branch Lumber Co., dealers in lumber, laths, shingles, pickets, &c.; office & yard, foot of Risk St., near 22nd.

(Personal.)

CHICAGO, *August 27th*, 1883.

Geo. Ott, Esq., Davenport, Iowa.

DEAR SIR: We have a large stock of good lumber suitable for your use. We can prove of service to you in supplying it and you to us in buying it. We are also in a position to extend you liberal time on future purchases, as we have done in the past; also, in view of possible further extension favors as granted by us a few days ago, we desire to request at your hands an itemized statement of your affairs, that we on our part may feel perfectly safe in extending such favors. We trust you will not take exceptions to our request, it being purely a matter of business and not with any desire to know of your affairs, except from a broad commercial standpoint; have five cars loaded for you to-day; shall of course consider your statement as strictly confidential.

Resp'y yours, SO. BRANCH LUMBER CO.
FRANCIS BEIDLER, *Sec't'y.*

Copy.
Exhibit No. 1 to Francis Beidler's deposition.

284 All claims for damages must be made within five days after receipt of goods. All bills not paid at maturity are subject to sight drafts without notice.

DAVENPORT, IOWA, *Jan'y 5th*, 1884.

Bought of George Ott, manufacturer of and wholesale dealer in sash, doors, blinds, glass, and moulding; glazed windows a specialty; office, 410 West Front St.

Terms: —.

Resources.		Liabilities.	
Warehouse & land	$14,000 00	L. Schricker, note	$65,250 00
Factory, m'ch'y, & ground	36,000 00	Bills payable	28,388 51
Lumber	36,389 17	% payable	12,245 65
Lumber & stock in process of mftr.	7,500 00	Mtge. on warehouse	4,000 00
Stock of glass, glazed sash, teams, wagons, harness, doors, blinds, etc.	32,684 55	Mtge. on residence	3,000 00
Office fixtures, &c.	1,475 00		
Acs. & bills receivable	17,498 63		
Residence	16,000 00		
Stone quarry	11,000 00		
Farm	4,500 00		
	$177,047 35		112,884 16

Carry insurance on—

Stock in warehouse	$25,500 00
Warehouse	7,000 00
Factory & stock	44,000 00
Residence	6,500 00

(Ex. "B," F. H.)
Exhibit No. "2" to Beidler's deposition.

F. B. H.

285 Office of George Ott, manufacturer of and wholesale dealer in sash, doors, blinds, and mouldings; glazed windows a specialty.

DAVENPORT, IOWA, *Jan. 12th*, 1884.

South Branch Lumber Co., Chicago, Ill.

GENTS: I inclose you herewith my statement of affairs, as per balance-sheet of Jan'y 5th.

Trusting this proves to be to your satisfaction, I am

Yours truly, GEO. OTT.

H.

Exhibit No. "3" to Beidler's deposition.

F. B. H.

286 Jacob Beidler, pres. B. F. Fergusson, tre's.
Francis Beidler, sec.

Office of South Branch Lumber Co., dealers in lumber, laths, shingles, pickets, &c.; office & yard, foot of Fisk St., near 22nd.

CHICAGO, *December 31st*, 1884.

Geo. Ott, Esq., Davenport, Iowa.

DEAR SIR: We assume you close your business Jan'y 1st. If so, will you kindly furnish us a statement of your condition at such closing, including all assets as well as liabilities of whatever nature, and confer a favor.

Yours truly, SOUTH BRANCH LUMBER CO.
FRANCIS BEIDLER, *Sec't'y.*

Copy.
Exhibit No. "4" to Beidler's deposition.

F. H.

287 Jacob Beidler, pres. B. F. Ferguson, tre's.
Francis Beidler, sec.

Office of South Branch Lumber Co., dealers in lumber, laths, shingles, pickets, &c.; office & yard, foot of Fisk St., near 22nd.

CHICAGO, *January 17th*, 1885.

George Ott, Esq., Davenport, Iowa.

DEAR SIR: Do not forget statement promised when here. We are anxious to have same on file for 1885.

Yours very truly,

SOUTH BRANCH LUMBER CO.
FRANCIS BEIDLER, *Sec't'y.*

Copy.
Exhibit No. "5" to Beidler's deposition. F. H.

288 Office of George Ott, manufacturer of sash, doors, blinds, and mouldings; glazed windows a specialty; office, 410 West Front street.

DAVENPORT, IOWA, *Jan. 23rd*, 1885.

South Branch Lumber Co., Chicago, Ill.

GENTS: Inclosed please find the desired statement of my financial standing, which I trust you will find to be to your satisfaction, while remaining

Yours very truly,

GEO. OTT.

H.

(Ex. No. "17," F. H.)
Exhibit No. "6" to Beidler's deposition.

F. B. H.

289 DAVENPORT, IOWA, *Jan. 23rd*, 1885.

Statement of the Financial Standing of Geo. Ott.

Resources.		Liabilities.	
Warehouse	$14,000 00	Mtge. on factory	$10,000 00
Factory, dry kiln, m'ch'y, and grounds	39,700	Mtge. on warehouse	4,000
Stock in process of mfr.	7,000	Mtge. on residence	3,000
Lumber	26,547 81	Bills payable	36,798 69
Teams, wagons, harness, and office fixtures	2,150 27	Accounts payable	10,522 48
Stock of glazed sash, doors, glass, blinds, &c.	29,720 55		
Acc't & bills receivable	11,157 82		
Residence	16,000 00		
Quarry	11,000		
	$157,276 45		$64,321 17
	64,321 17		
	$92,955 28		

(Ex. No. "18," F. H.)
Exhibit No. "7" to Beidler's deposition.

F. B. H.

290 Jacob Beidler, pres. B. F. Ferguson, tre's.
Francis Beidler, sec.

Office of South Branch Lumber Co., dealers in lumber, laths, shingles, pickets, &c.; office and yard, foot of Fisk St., near 22nd.

CHICAGO, *January 26th*, 1885.

Geo. Ott, Esq.

DEAR SIR: We are in receipt of your statement under date of January 23rd, for which accept thanks.

Yours very truly,

SOUTH BRANCH LUMBER CO.
FRANCIS BEIDLER, *Sec't'y.*

Copy.
Exhibit No. "8" to Beidler's deposition.

F. H.

291 Jacob Beidler, pres. B. F. Ferguson, tre's.
Francis Beidler, sec.

Office of South Branch Lumber Co., dealers in lumber, laths, shingles, pickets, &c.; office & yard, foot of Fisk St., near 22nd.

CHICAGO, *October 2nd*, 1885.

Geo. Ott, Esq., Davenport, Iowa.

DEAR SIR: In the early part of this year we made a request of you for a written statement showing assets and liabilities (itemized), but same was never furnished us—at least we are unable to find such record—and, as we recollect, think you omitted to do so. Will you kindly furnish us such statement as near as you are able to do so? We find that your indebtedness to us now aggregates $35,622.07.

An early reply will much oblige,

Yours very truly,

SOUTH BRANCH LUMBER CO.
FRANCIS BEIDLER, *Sec'ty.*

Copy.
Exhibit No. "9" to Beidler's deposition.

F. H.

292 Jacob Beidler, pres. B. F. Ferguson, tre's.
Francis Beidler, sec.

Office of South Branch Lumber Co., dealers in lumber, laths, shingles, picket, &c.; office & yard, foot of Fisk St., near 22nd.

CHICAGO, *January 14th*, 1886.

Geo. Ott, Esq., Davenport, Iowa.

DEAR SIR: We are in receipt of yours of the 12th, inclosing note, $3,324.00, as part payment of note, $4,324.13, due the 13th. We will honor your sight draft when presented for the $3,324.00. Sorry you could not pay more of this, but hope for the best. Do not forget the statement left by the writer when he was there. Suppose ere this you have closed year's business and can furnish us with such statement.

Yours very truly,

SOUTH BRANCH LUMBER CO.
FRANCIS BEIDLER, *Sec'ty.*

Copy.
Exhibit No. "10" to Beidler's deposition.

F. H.

293 Jacob Beidler, pres. B. F. Ferguson, tre's.
Francis Beidler, sec.

Office of South Branch Lumber Co., dealers in lumber, laths, shingles, pickets, &c.; office and yard foot of Fisk St., near 22nd.

CHICAGO, *February 25th*, 1886.

Geo. Ott, Esq., Davenport, Iowa.

DEAR SIR: Replying to yours of the 20th, evidently our accounts agree. Send us note for your balance to Feb'y 1st. Any shipments which you make for us during February can be applied on account of shipments by us to you during February. We are also anxious to have the statement promised us, and hope no delay will occur in furnishing same as soon as you take account of stock and are able to intelligently furnish us with such information.

Yours very truly,

SOUTH BRANCH LUMBER CO.
FRANCIS BEIDLER, *Sec'y.*

Copy.
Exhibit No. "11" to Beidler's deposition.

F. H.

294 Jacob Beidler, pres. B. F. Ferguson, tre's.
Francis Beidler, sec.

Office of South Branch Lumber Co., dealers in lumber, laths, shingles, pickets, &c.; office and yard, foot of Fisk St., near 22nd.

CHICAGO, *March 16th*, 1886.

Geo. Ott, Esq., Davenport, Iowa.

DEAR SIR: When Mr. Ott was here last he promised to take stock and furnish us a statement. We have been waiting for that since Jan'y 1st, and feel now that it should be forthcoming. Shall not be satisfied until it is. We feel our interest in you is such that we have a right to call for this statement and to ask you to take account — stock and furnish it to us without further delay.

Yours very truly,

SOUTH BRANCH LUMBER CO.
FRANCIS BEIDLER, *Sec'y.*

Copy.
Exhibit No. "12" to Beidler's deposition.

F. H.

295 Jacob Beidler, pres. B. F. Ferguson, tre's.
Francis Beidler, sec.

Office of South Branch Lumber Co., dealers in lumber, laths, shingles, pickets, &c.; office and yard, foot of Fisk St., near 22nd.

CHICAGO, *March 19th*, 1886.

Geo. Ott, Esq., Davenport, Iowa.

DEAR SIR: We are in receipt of yours of the 17th inclosing note'

$2,000.00, in part payment of $2,800.00 note, due the 18th. Will honor your sight draft for the $2,000.00 note when presented.

It is unnecessary for us to say that we regret very much your inability to meet at least the half of this paper. Glad to hear of the shipment to the Traders' Lumber Co., and would like to see invoices for all orders as soon as possible; are also waiting for statement promised.

Yours very truly,

SOUTH BRANCH LUMBER CO.
FRANCIS BEIDLER, *Sec'ty.*

Copy.
Exhibit No. "13" to Beidler's deposition.

F. H.

296 Jacob Beidler, pres. B. F. Ferguson, tre's.
Francis Beidler, sec.

Office of South Branch Lumber Co., dealers in lumber, laths, shingles, pickets, &c.; office & yard — of Fisk St., near 22nd.

CHICAGO, *April 7th*, 1886.

Geo. Ott, Esq., Davenport, Iowa.

DEAR SIR: We are still patiently waiting for statement, which we supposed before this we would have received.

Do not delay a moment after it is ready in sending it to us.

Yours very truly,

SOUTH BRANCH LUMBER CO.
FRANCIS BEIDLER, *Sec'ty.*

Copy.
Exhibit No. "14" to Beidler's deposition.

F. B. H.

297	'85.	'86.
Warehouse	$14,000	16,000
Fcty., dry kiln, yds.	39,700	49,146
Stk. process of mfg. lumber	33,547 81	35,460
Teams, etc.	2,150 27	2,740
Stock, etc.	29,720 55	47,176 77
Acc'ts & bills	11,157 82	14,014 18
Residence	16,000	16,000
Quarry	11,000	14,000

	'85.	'86.
Mtg. factory, $10,000	$10,000	$10,000
" warehouse	4,000	3,500
" residence	3,000	3,000
Bills payable	36,798 69	108,310 02
Acc'ts payable	10,522 48	46,138 82

Exhibit No. "15" to Beidler's deposition.

F. B. H.

298

'86. Assets	194	
'85. "	157	
'86. Liabilities	171	
'85. "	64	
Increase assets	86	37
" liabilities	86	107

Exhibit No. "16" to Beidler's deposition.

F. B. H.

299 George Ott, manufacturer of sash, doors, blinds, & mouldings; glazed windows a specialty; office, 410 West Front street.

DAVENPORT, IOWA, *April 8th*, 1886.

South Branch Lumber Co., Chicago, Ill.

GENTS: I herewith inclose you statement of my financial standing, which I trust you find to be satisfactory, while remaining,

Yours truly, GEO. OTT.

H.

(Ex. No. "19." F. H.)

Exhibit No. "17" to Beidler's deposition. F. B. H.

300 All claims must be paid within five days after receipt of goods. All bills not paid at maturity are subject to sight draft without notice.

DAVENPORT, IOWA, *March 29th*, 1886.

Statement of George Ott, manufacturer of and wholesale dealer in sash, doors, blinds, glass, and mouldings; glazed windows a specialty; office, 410 West Front street.

Assets:

Acc'ts receivable & bills receivable	$14,014 18	
Glass, sash, doors, blinds, etc., as per inventory	47,176 77	
Factory, machinery, & grounds, as estimated by Mr. Ott	49,146 00	
Lumber & mouldings and stock in process of mftr. as estimated by Mr. Ott	35,460 00	
Quarry, estimated by Mr. Ott	14,000 00	
Warehouse, " " "	16,000 00	
Teams, wagons, etc., estimated by Mr. Ott	2,740 00	
Residence, " " " "	16,000 00	
		$194,536 95

Liability:

Bills payable	108,310 02	
Acc'ts payable	46,138 82	
M'tg'e on factory	10,000 00	
" " warehouse	3,500 00	
" " residence	3,000 00	
		$170,948 84
		$23,588 11

Total insurance carried, $88,500.00.

(Ex. No. "20." F. H.)
Exhibit No. "18" to Beidler's deposition.

F. B. H.

301 In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division.

THE SOUTH BRANCH LUMBER CO.
vs.
GEORGE OTT *et al.*

Messrs. Cook & Dodge, Smith & Helmer, and A. J. Hirschl appear for plaintiff.

Messrs. Bills & Block appear for George Ott and J. B. Meyer (substituted assignee).

Mr. Bleik Peters appears for Addie Kloppenberg.

Mr. Ernst Claussen appears for Charles Hill.

Testimony on Part of Plaintiff.

DAVENPORT, IOWA, *April 8th, p. m.*, 1887.

Deposition of Ernst Claussen.

Mr. ERNST CLAUSSEN, a witness on part of plaintiff, being first duly sworn, in answer to interrogatories propounded by counsel for plaintiff, testified as follows:

By Mr. HIRSCHL:

Interrogatory 1. State your name, age, place of residence, and occupation.

A. Ernst Claussen; Davenport, Iowa; 54; attorney-at-law.

2. You are the same Ernst Claussen who is attorney for Charles Hill in this case?

A. I am.

302 3. You are acquainted with George Ott?

A. I am.

4. For how many years?

A. Twenty years, more or less—25 years, more or less.

5. You are aware of his making an assignment in April, 1886?

A. I am—1886; yes, yes.

6. At the time of the assignment was he indebted to you individually and to you as guardain; if so, to what extent? State the particulars.

A. He was indebted to me individually in the sum of $500.00, with interest at the rate of 8 per cent. per annum from February 8th, 1885, for which I held the first mortgage on a part of the property then occupied by him as a factory in the city of Davenport, Iowa. He was further indebted to me as guardian for Selma Schriker, minor, in the sum of $3,000, with 7 per cent. interest from October 3rd, 1885, secured by mortgage on two lots on 6th street, in Davenport, Iowa.

7. The two lots on 6th street then occupied by him as a homestead?

A. Yes.

8. What, if any, interest payments were made by Mr. Ott to you shortly before the assignment? Give particulars and when, if any.

A. He paid me in the month of April, 1886, $105, being the interest up to April 3rd, 1886, on the mortgage I held against him for Selma Schricker.

9. When did he make this payment?

A. He made it in the month of April, 1886.

10. How shortly before his assignment?

A. I can't tell exactly, but I presume within about a week before his assignment, as near as I can remember. I can tell exactly by looking at the books; it was within a week.

303 11. Give particular circumstances and the conversation at the time of the making of this payment, especially the conversation in reference to the debt then existing between you and him.

A. He came to my office and tendered me a check for $105, and desired me to give him credit for that amount on the interest then due on the mortgage I held against his homestead as guardian.

12. Anything else said and done?

A. I did so; I credited it on my books to my ward on that account.

13. What, if anything, was said in relation to the past-due interest on the other mortgage?

A. I asked him to pay that, and he said, Never mind; small amount only, and you don't need the money, and I will make it all right with you before long.

14. On the $500 mortgage what was his last payment of interest and at what time?

A. His last payment of interest on the $500 mortgage was February 8th, 1885.

15. Am I right in supposing that at the time of his failure there was over two years past due on the $500 mortgage?

A. He was owing me interest from February 8, 1885, on the $500 loan.

16. That is, at the time of his failure there was a full year's interest past due on the $500 note, and several months due, from February 8th to April, besides. That is correct, is it?

A. Yes.

17. At the rate of 8 per cent.?

A. 8 per cent.; yes, sir.

18. When had he last paid interest on the $3,000 mortgage prior to this April, 1886, payment?

304 A. In October preceding.

19. How much did he pay in October preceding?

A. $210.

20. One full year's interest, I suppose?

A. Yes, sir.

21. The $3,000 loan was made October 3rd, 1884?

A. Yes; I believe so.

22. What, if any, demand had you made on Mr. Ott in April, 1886, that he should pay interest on the homestead mortgage?

A. I notified him by mail, either in March or in April, requesting him to come to my office and settle up his interest. My opinion is that I did it by letter, but my clerk informed me that I did it by postal card. That is contrary to my rule, but I presume my clerk's recollection is correct on that point. I remember I notified him by mail.

23. Had you any conversation with him before that as to back interest on the $500 from time to time?

A. No, sir; I had not.

24. What conversation, if any, had you had with Mr. Ott in reference to paying the $3,000—the interest on the $3,000—annually or semi-annually?

A. None that I know of.

25. Under what arrangements or conversation did he make his first payment annually, namely, the payment in October, 1885?

A. He came around, gave me a check, and I credited on my books.

26. Did the papers, in fact, call for semi-annual interest?

A. They did; yes.

27. After he made his first interest payment annually did

305 you, at any time or on any occasion, express any desire or wish to have him pay it semi-annually?

A. I did not. I would like to add by way of explanation nearly all my loans are made interest payable annually, though some are semi-annually. If I am perfectly secure I do not care whether it is paid semi-annually.

28. Do I understand that aside from sending the postal or letter asking him to call and settle the interest, you made any demand on him whatever to pay his homestead interest?

A. I did not.

Cross-examination by Mr. BILLS:

Cross-interrogatory 1. Mr. Claussen, has either of the attorneys for the plaintiff in this case interviewed you in regard to the subject you have been testifying about?

A. Yes, sir.

2. Who did it?

A. A. J. Hirschl.

3. Did you make a clean breast of it?

A. I did.

4. Upon the strength of that you have been subpœnaed to tell the story?

A. I do not know.

5. You are the mayor of the city of Davenport and the head of the police?

A. I suppose so.

6. In your professional capacity as either I ask you if there seems to be anything suspicious in the matter of Mr. Ott's assignment as far as it has gone.

Objected to as immaterial.

A. I see nothing suspicious.

That is all.

(Signed) ERNST CLAUSSEN.

306 STATE OF IOWA, } ss:
Scott County, }

Subscribed and sworn to by the said Ernst Claussen on the 27th day of April, 1887, before me, Flora Haddix, a notary public in and for Scott county, Iowa.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] (Signed) FLORA HADDIX.

307 In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division.

THE SOUTH BRANCH LUMBER CO. }
vs.
GEORGE OTT *et al.* }

Messrs. Cook & Dodge, Smith & Helmer, and A. J. Hirschl appear for plaintiff.

Messrs. Bills & Block appear for George Ott and J. B. Meyer (substituted assignee).

Mr. Bleik Peters appears for Addie Kloppenberg.

Mr. Ernst Claussen appears for Charles Hill.

Testimony on Part of Plaintiff.

DAVENPORT, IOWA, *April* 8, *p. m.*, 18—.

Deposition of T. W. McClelland.

Mr. T. W. MCCLELLAND, a witness on part of plaintiff, being first duly sworn, in answer to interrogatories propounded by counsel for plaintiff, testified as follows:

By Mr. COOK:

Interrogatory 1. You may state your name, age, residence, and occupation.

A. My name is T. W. McClelland; age, 55; occupation, manufacturer and builder; residence, Davenport, Iowa.

2. Are you acquainted with George Ott, one of the defendants in this case; and, if so, how long have you known him?

308 A. I have known Mr. Ott for nearly 30 years—oh, no; not so long as that. I have known him since 1860, I think.

3. Are you and were you in April, 1886, a member of the firm of T. W. McClelland & Co., Davenport?

A. Yes, sir.

4. You may state whether or not on the 26th day of April, 1886, Mr. George Ott had any transactions with you about making a transfer of paper to your firm on account of any indebtedness that was due from him to T. W. McClelland & Co.; and, if so, state the particulars, what happened, and all about it.

A. You named a certain day, Mr. Cook. I could not answer as to the date. Mr. Ott came in to see us in the afternoon, the day before he made his assignment. I remember he presented us with a—I was there alone—presented me with a draft on a firm in Minneapolis—their draft, say, somewhere in the neighborhood of six or seven hundred dollars. He wished me to take it and apply to his account.

5. State all the conversation you had with him.

A. He further said he was in trouble and expected to be in trouble and he didn't propose to go back on his friends. I asked him what kind of trouble, and he said the South Branch folks were acting very mean towards him—that is to say, he repeated that they wanted more than he was able to pay them, and he had sent them $5,000 at such a time and several car-loads of goods, such as sash and doors; that they wrote him back that that was not enough; that he would have to do better. That is about as near as I can remember the conversation. Mr. Ott was owing us something—about a thousand, I think—at that time.

6. Do you know whether or not immediately before that

309 time any demand had been made upon him by your firm for payment?

A. I think not. I think his account was not due—that is, we give him the 60 days that we usually give customers.

7. Do you remember the name of the firm on which this draft was drawn?

A. No; I cannot recollect it. I would know it if I heard it.

8. I call your attention to an entry appearing in the day book of George Ott, which is attached to the deposition of William Heesch as Exhibit No. 4, said entry being under date April 26th, 1886, and reading as follows: Gave to T. W. McClelland & Co. draft on acc't on Edwards & McCullough L'b'r Co. (I suppose that means lumber company), at 90 days, April 24th, $674.74, which applied on account, $660.8–, less discount at 8 per cent., $13.94, and ask you if that entry covers the transactions to which you refer.

A. Yes, sir.

9. State whether or not you took the draft from Mr. Ott.

A. Yes, sir; I took the draft from him.

10. State whether or not at that time it had been accepted by the drawee?

A. It had not.

11. What did you do with the draft?

A. I put it in the bank for collection, and they sent it forward.

12. State whether or not it was collected in full or not.

A. There was some delay about the collection of that draft. My remembrance is it was probably 30 days before we had a collection. There was some correspondence as to whether they ought to pay it or not, knowing that Mr. Ott had made an assignment. After-
310 wards I think Mr. Ott himself wrote to the parties, stating it was all right. My brother attended to that part of it. That is simply my general recollection of it.

13. State whether or not you have examined the books of T. W. McClelland & Co. to see when any entry was first made in respect to the transaction as to that draft and proceeds of it.

A. Well, I have just examined the book.

14. Will you please turn to the entry in the book and state under what date it is entered?

A. Under date of June 8th, 1886. It is credited up to George Ott. It reads, By cash, Edwards & McCullough Lumber Co., draft, $661.25.

15. Is that the only entry that you find on the book in relation to the transaction?

A. Yes, sir. There may be some other record, but I could not find it.

16. Mr. McClelland, are you acquainted with what is known now as the stone-quarry property in which Mr. Ott is interested in Muscatine county?

A. Yes, sir.

17. How long have you known the property?

A. I think I was down 12 years ago the first time—10 or 12 years ago.

18. Have you seen it since?

A. I hadn't been up at it more than once or twice since. I was there, I think, about 5 years ago.

19. Do you know what the value of that property is as a quarry property, and what it was in January, 1885?

(Objected to as incompetent and immaterial; no proper foundation to show that the witness knew the value of such property unless he knows everything.

311 A. Well, I never considered the property worth much—very much. I know that Mr. Ott abandoned it for the reason he could not make anything out of it, and for years he has not been doing anything with it for the reason it would not pay to work it.

(It is moved to strike out the answer as not at all responsive to the question in any respect, the question being whether he knows the value of that property. He has not answered it.)

20. I will ask you again. State whether or not you know what

the value of that property is as a quarry property and what its value was, particularly in the month of January, 1885.

(Objected to for the same reason as the last preceding interrogatory.)

21. The question is whether you know?

(Objected to for the same reason as the last two preceding interrogatories.)

A. All I know is it isn't worth much. What it is actually worth I probably could not say.

22. You may state whether or not you ever had any conversation with Mr. Ott in regard to the use of that property there, and whether or not it had been abandoned by him; what conversation you have had about it in the last three years.

Objected to as incompetent and immaterial, no proper foundation to show that the witness knew the value of such property
312 unless he knows everything; also because it — hearsay testimony and not binding upon the assignee.)

A. I cannot call up any special conversation. I know Mr. Ott talked about the property frequently and felt it was valuable at times, and at other times he would feel that it was a disadvantage to him to have it. Mr. Ott had a variety of opinions about it, as near as I can remember.

Objected to. The answer is not responsive to the question.

23. Do you know anything about there having been a narrow-gauge railroad track on which push-cars or cars operated by animals were run out there at one time?

A. Yes, sir.

24. Do you know about when that was taken up, if it ever was taken up?

A. Some years ago; I don't know how long exactly since it was taken up.

25. You may state what, in your opinion, the value of that property is as quarry property or what it was worth in January, 1885.

Objected to for the same reason, because the witness has already stated he don't know the value of the property.

A. In my candid judgment, I should not consider that property worth more than the value of vacant land. I believe I should prefer to have good, tillable soil as that quarry land.

The answer objected to as not responsive.

A. The value of a quarry depends upon the character of
313 the stone you get out of it, how easily it can be quarried, the quality of the stone, and the cost of getting it to market.

It is moved to strike out the last part of the answer as not responsive.

26. Are you familiar with the stone from that quarry?

A. Yes, sir.

27. In your business as builder, state whether or not you have occasion to examine and consider the qualities of stone, and whether you have some knowledge of stone by reason of your business experience. It is part of your business to know the quality of stone?

A. Yes, sir.

28. You may state what the quality of that stone is, in your opinion, for building purposes and the ordinary purpose for which stone is used.

Objected to for the same reasons as previous interrogatories.

A. It is good for rough purposes—building raw walls and piers.

29. What is the character of the stone?

A. A kind of limestone. It is a stone that colors; gets very red on exposure. There is a certain amount of iron in it.

30. State whether it is desirable for building purposes.

A. It is a very good for rough walls, but I believe it is not very good for bridge piers or anything of that kind, where it requires stone that is durable.

31. State whether or not you are familiar with the price of the stone and the value of stone generally in this vicinity.

314 A. I am familiar with the price of stone; I am familiar with the qualities, of course. The kind you get around here is coarse stone. There is very little fine stone quarried in the State.

32. Well, now, judging from your experience and knowledge in regard to stone and your knowledge of this stone that comes from this quarry, will you give the best estimate that you can as to the value of that 147 acres for quarrying purposes?

Objected to for the same reason, because the witness has once stated he does not know the value of the stone quarry.

A. In answer to your question as to the value of the farm, I should say that farm throughout is not worth more than fifty dollars per acre, quarry and all. We bought a farm just below that for less money, with just as good a quarry on it.

The answer is objected to as not responsive to the interrogatory.

33. Will you please state the value of it for quarrying purposes, independent of the value of the land for tillable purposes, the title being a lease title?

Objected — for the same reason, because the witness has stated he didn't know the value of the stone quarry.

A. It would be a very difficult matter to say what the value of the quarry was, independent of the farm. The truth of the matter is, the quality of the stone there won't justify any expenditures. Concerning the value of the quarry, I could not say what the actual value of that is, outside of the tillable land.

That is all.

315 Cross-examination by Mr. BILLS:

Cross-interrogatory 1. You say this stone is not suitable for piers for bridges, do you?

A. It has been condemned by civil engineers.

2. Who condemned it for that purpose?

A. I think that Gen. Flagler or Col. Flagler did.

3. Do you know that Col. Flagler bought large quantities of it and used it on the island?

A. He may have used it for riprap, I think.

4. How do you know it was for riprap he used it?

A. I have heard so.

5. Will you swear, of your own knowledge, that Col. Flagler used it for riprap?

A. I will not swear so.

6. What makes you think so?

A. General report.

7. Who told you such stuff as that?

A. I have heard it reported around.

8. Do you think Col. Flagler would buy stone down where that quarry was, and pay the price for it he did, and the expense of getting it to the Island, and then use it for riprap when he has piled up any quantity of stone such as is used for riprap?

A. I did not know that he had.

9. Don't you know that he had a good many thousand perches of stone piled up for years ready to use for riprap?

A. There is a good deal of waste from the Island.

10. Don't you know he had riprap stone piled up for use for years?

A. I don't know anything about that.

316 11. Don't you know that when the R. I. built its road from Davenport to Muscatine it bought stone from Mr. Ott, and used it to make bridge piers of, and it is now in the piers?

A. There was some of it very small blocks. I know, further, that a great deal of that stone crushed under the weight of the water tanks. I have seen that.

12. Do you know that it is in good condition in the piers where they used it to-day?

A. There may be some layers of it that were good.

13. Do you mean to say that any of those piers have crumbled in any way?

A. I have seen crushed——

14. Have you seen any crushed stone in any of the piers?

A. What piers?

15. In the bridges between here and Muscatine, on their road.

A. I haven't seen any of the stone in bridges, I think—very little.

16. Do you mean to swear they didn't buy it from Mr. Ott?

A. I don't believe they bought any from him; that is my impression; they quarried their own stone from quarries below here.

17. What do you know about it?

A. I said I did not believe they bought any stone from him.

18. Why don't you believe it? Mr. Ott has sworn so to-day or yesterday. Would you believe it on his oath?

A. I don't know anything about what he has sworn to.

19. You have no personal knowledge of their buying stone from Mr. Ott to build piers of?

A. I have not.

20. Why do you disbelieve it?

A. Because I never heard of it.

21. Do you hear everything?

317 A. He never sold any stone but what he would tell it.

22. He never told you that?

A. Never. I have been along the line of that road a good deal and I never noticed any of his stone.

23. You think you would know it if you saw it?

A. I would.

24. Did you ever test that stone in any way?

A. Yes.

25. What with?

A. In building.

26. With a tester?

A. No; by experience and noticing it.

27. Do you know Col. Flagler tested it there and pronounced it good?

A. No, sir.

28. You didn't know that?

A. No, sir.

29. You never took pains to inquire about that?

A. No, sir.

30. How deep is the ledge of stone? Did you ever examine to see?

A. Do you mean how far it goes down? I can't tell. I didn't go to the bottom of it.

31. How many times have you been down there?

A. Three or four times.

32. How many times have you been down there in the last ten years—four times?

A. Yes.

33. What for?

A. To see the quarry.

34. When was the last time?

A. I don't remember.

35. Do you know how deep the stone ledge is?

A. I don't know whether he or anybody else has struck the bottom of the ledge in order to find how deep the ledge is. Sometimes it is dangerous to go too deep.

318 36. Why?

A. Strike water.

37. They can pump the water out. How much surface does the quarry cover there?

A. I never measured.

38. About how much?

A. I suppose there is a couple of acres.

39. How far is it from the river?

A. Quite a little distance.

40. How far?

A. I suppose about three-quarters of a mile.

41. How far is it from the track of the R. I. road?

A. The track of the road is pretty close to the river.

42. How far is this stone quarry from the track of the R. I. road?

A. I could not tell you exactly.

43. About how far? If you are so familiar you ought to know.

A. I am this familiar. I have been down there. I could not tell the exact number of feet and inches.

44. I didn't ask you how far, but about how far.

A. About a half a mile to three-quarters from the railroad.

45. Will you swear to that?

A. That is my recollection.

46. Do you recollect as well about that as about the other matters relating to the quarry?

A. I presume I do.

47. Its nearness to the road would have something to do with its value, would it not?

A. It would depend how it is connected with the road—whether there was any track or not.

319 48. If it is near by, a side track might be laid with less expense?

A. Of course.

49. You ought to know how near it is in order to be able to give its value.

A. It isn't far from the railroad; that is a well-known fact.

50. You know it is more valuable because of its nearness to the railroad; that shipping facilities make it very much more valuable. Where have you used any of that stone in the city here?

A. I used some of it in the Atlantic House.

51. What house?

A. In the Atlantic House, opposite the Kimball.

52. In what part of the Atlantic House is this stone used?

A. It is used for window-sills.

53. Is there any other, that you know of, in use here?

A. I don't know of any other.

54. Do you not know of any other building in which it is used?

A. I think in the Academy of Science building.

55. Does not it stand reasonable well, as well as the ordinary stone used in buildings here?

A. It scales off more than other stone.

56. More than the Joliet stone?

A. I think it does.

57. Will you swear that it scales off more than the Joliet stone?

A. There are different grades in all quarries; some layers, certain strata are better than others.

58. You used some of the Nauvoo stone in Mr. Parker's house; does that crumble or scale?

A. No.

59. Will you swear that it does not?

A. Not to my knowledge.

320 60. Have looked at it lately?

A. Yes.

61. How lately?

A. This winter? I don't know—lately.

62. Won't you look at it and see if it does not scale?

A. Some that isn't Nauvoo stone.

63. I refer to the stone in the front steps. Will you swear that the stone in the front steps have not scaled off and crumbled?

A. I won't swear it has crumbled.

64. Isn't it mostly Nauvoo stone in the building?

A. The stone in the building proper and trimmings is Nauvoo stone.

65. Ar'n't the steps made of Nauvoo stone?

A. I think not.

66. Will you swear the steps are not made of Nauvoo stone?

A. I will not swear. There is Joliet, Anamosa, and Nauvoo stone used there.

67. Will you swear that there is a single stone there except the Nauvoo stone?

A. Oh, Mr. Bills, you ask me too many questions.

68. Will you swear that there is a single stone at the Parker House except Nauvoo stone?

A. I said, sir, there were several kinds of stone in and around that building; what other stone except that stone was brought by Mr. Parker, I do not know.

69. You don't know what stone were put in the front steps?

A. My impression is the Joliet stone.

70. You won't swear it.

A. That is my impression.

71. Will you swear that there is a single Joliet stone in and about that building?

321 A. I told you that was my impression, that the steps were of Jolliet stone.

72. What was this debt for that Mr. Ott give you the draft on Edwards & McCullough to apply on?

A. An account we had against him.

73. What was it for?

A. For wire cloth.

74. Did you buy it for him?

A. We sold to him.

75. Didn't he order it through you and you buy it for him?

A. I don't remember.

76. Will you look at your book and tell me when you bought that wire cloth?

A. I could not tell it in this book.

77. Why not?

A. It would be too tedious.

78. Is it entered in that book?

A. Yes.

79. Will you look in Jan'y and see if it is entered there?

A. Jan'y, 1886. Have you got the date, Mr. Bills?

80. No, sir.

A. How do you know it is in Jan'y, then; March 29th, isn't it, Mr. Cook? I don't keep the books. I believe we bought that wire cloth of Wm. Blair & Co., of Chicago, of that date, for which we paid for it and sold Mr. Ott nine hundred and some dollars' worth of it.

81. When did you buy it of Wm. Blair & Co., Chicago?

A. It was along some time in the month of March.

82. When did you buy it of Blair & Co., of Chicago?

A. Our books show a credit to Wm. Blair & Co., charged with cash, $1,485.42, on the 1st day of April, 1886.

83. That was the payment for this wire, was it?

A. Yes, sir.

84. When did you actually order it from Blair & Co.?

A. I could not tell unless I'd look up the order.

322 85. Do you remember anything about it?

—. Here is Mr. Ott's order.

85*a*. When did you pay—what day in April did you pay for it?

A. The first of April, 1886.

86. That is some of the wire which you let Mr. Ott have?

A. Part of the wire went to fill his order.

87. Is it not a fact that you ordered this wire from Mr. Blair at Mr. Ott's request some time in Jan'y?

A. I could not say whether Mr. Ott left the order to me or left it to my brother.

88. Don't you know from your brother that Mr. Ott did request you to order that wire from Blair for him?

A. I simply know Mr. Ott's order was in for a certain amount of wire.

89. When was it in?

A. February 1st, 1886, according to the order book.

90. Was that before you ordered it from Blair & Co.?

A. I could not say as to that.

91. Have you the order book here?

A. Yes, sir.

92. Will you read the entry in it and give the date?

A. 18 thousand 22 cloth; 26 thousand 24 cloth; one thousand 26 cloth; two thousand 28 cloth; one thousand 30 —; 2 rolls, 32 sq. ft.

93. Please read all that there is there in the order. Is the name of Mr. Ott there?

A. George Ott, at the head of the order. Then there is green cloth and drab.

94. The date of that is Feb'y 1st, is it?

A. Feb'y 1st.

95. That was the wire delivered to Mr. Ott according to your books, if they show?

323 A. The wire evidently was delivered about April.

96. April when—the latter part of April or the first of April?

A. It was before. We don't pay for our goods until we receive them, and evidently it had been in before that time.

97. Was not the wire delivered by you to Mr. Ott before the 20th of Feb'y?

A. I could not say as to that.

98. Won't your books show it? If your books show it please look to see when you charged the wire to Mr. Ott as delivered to him. Haven't you? Is that the date when you paid Messrs. Blair & Co. for it?

A. I gave you the date, Mr. Bills, April 1st.

99. That is the time the entry was made. I want to know when the wire was actually delivered to Ott and whether there is an entry on your books to show that. If there is I want the date.

A. What you want is the time when Mr. Ott actually received that wire. Well, now, that thing ain't possible to give the exact date. He got it on different days and different dates as long as it came in. When the order is filled so much is taken out at such a time and when the order was filled this account would be entered up.

100. Then you say your books won't show when Mr. Ott got the wire?

A. I don't think so.

101. If they will show will you please find it and let me know?

A. I have told you when he was charged up with the wire, when we received the wire, and I don't think I can do much more than that. Feb'y 28th, Mr. Ott is charged with $904 17; George Ott, invoice for 19th, $904.17.

324 102. Now, does that mean that the goods were invoiced to him on the 19th of Feb'y?

A. I presume it does.

103. Then that was probably when they were delivered?

A. As I said before, they were not all delivered at once. They were delivered at different times, starting in from the date of the order.

104. Where is that entry made on the 19th of Feb.—where is that invoice? Do you understand from the entry in your books that the goods were invoiced to Mr. Ott on the 19th of Feb'y, 1886?

A. I presume they were.

105. When do your books show that you paid Blair & Co. for this wire?

A. On the 1st of April.

106. Who was present when Mr. Ott brought you the draft on Edwards & McCullough and you had this conversation with him?

A. I don't think there was any one present except Mr. Gartside, who is in the back room just adjoining.

107. Where was it?

A. At my office.

108. What time in the day was it?

A. It was along in the afternoon after banking hours; after 3 o'clock.

109. How do you happen to remember the time of the day?

A. I remember it was after banking hours because I had occasion to go to the bank after that.

110. Did you enter the draft on your books at the time you received it?

A. No, sir. You mean the time I received the draft from Mr. Ott?

111. Yes. You keep the books of the firm of T. W. McClelland & Co.?

A. No, sir.

112. Who does?

A. My brother.

113. Do you attend to collecting the bills?

325 A. No, sir; not always.

114. What part of the business do you look after?

A. The general outside business.

115. The building business?

A. The building business, the factory, and manufacturing business.

116. Your brother, Geo. P. McClelland, attends to the financial affairs?

A. More or less.

117. Does he do most of it?

A. No; I don't say he does most of it. We do about equal. Any important matter we consult together.

118. Did you know he had been down to collect this bill from Mr. Ott?

A. No, sir.

119. Didn't he ever tell you that he had?

A. He never did.

120. You have no knowledge of his going down to collect it at all?

A. No, sir.

121. Did you make out a bill and give Mr. Ott a receipt for it when he give you the draft?

A. I didn't give him any receipt for it. He told us to give him credit.

122. When did you first tell anybody about this conversation you had with Mr. Ott on the 26th of April?

A. I think I told my brother the next day.

123. Did you tell anybody else?

A. I don't know but I did.

124. You don't know that you did?

A. Possibly I did.

125. Who did you tell it to?

A. I don't remember.

126. Did you tell it to your brother after you learned of the failure of Mr. Ott?

A. My brother was out of town; didn't return until the next day.

326 127. Did you tell Mr. Cook about it?

A. I think I did.

128. When did you give Mr. Cook the information about it?

A. Some time after the failure.

129. Did you tell it voluntarily or did he ask you?

A. I think it was voluntarily.

130. Did Mr. Cook come to and ask you what you knew about it?

A. No, sir.

131. Did George Osborne?

A. No, sir.

132. Didn't Mr. Hirschl interview you on the subject?

A. No, sir.

133. Will you swear that neither Mr. Cook nor Mr. Dodge nor Mr. Osborne nor Mr. Hirschl came to you and asked you if you could not swear to something in regard to this matter—something Mr. Ott said?

A. None of these gentlemen approached me in that way. Mr. Cook spoke to me this morning to ask me to come down.

134. He didn't ask you what you knew about it? You will swear he didn't ask you what you knew about it?

A. Yes, sir.

135. You voluntarily told Mr. Cook about it?

A. I think I did.

136. You knew at that time he was an attorney for the South Branch Lumber Co. in this case against Mr. Ott, didn't you?

A. I think at the date of that conversation Mr. Cook had nothing to do with the case, as far as I knew. I think the early part of Mr. Ott's assignment—I don't think Mr. Cook had anything to do with the case.

137. When you talked with Mr. Cook and told him about it did you know he was an attorney in the case?

A. I did not.

327 138. Did you sign the attachment bond for the South Branch Lumber Co.?

A. I think I did.

139. At whose request did you do it?

A. I signed a good many. I presume it was at the request of Cook & Dodge.

140. You knew that Mr. Cook was an attorney in the case?

A. I think so.

141. You told him what you say Mr. Ott had told you about it?

A. I don't think we had any conversation about it.

142. I didn't ask you that. I asked you if you went to Mr. Cook, knowing he was an attorney in a case against Mr. Ott—went to him and voluntarily told him anything that would hurt Mr. Ott.

A. Nothing with any such feeling.

143. Do you think Mr. Ott regarded you as a friend?

A. I think so.

144. Why, then, did you want to tell things that would hurt him?

A. I don't know as I ever said anything to hurt him.

145. You told Mr. Cook what you say Mr. Ott said to you?

A. I may have referred to this matter of the account.

146. Have you stated all Mr. Ott said on that occasion?

A. I do not know that I have.

147. You have stated all that you remember he said?

A. I don't know Mr. Ott referred to business matters.

148. I didn't ask you to state anything. I asked you if you had stated all you remember of his saying on that occasion—whether you have or not.

A. I don't know, sir, whether I have or not.

149. You are not able to say that?

328 A. I think I could safely say that I had not. Mr. Ott talked a great deal that I don't remember. Of course I could not remember all that he said to me.

150. Of course you could not remember all he said to you. You didn't undertake to remember all he said. Is that it?

A. Yes, sir.

151. Have you talked with Mr. Smith, one of the attorneys for the complainant, about the case?

A. I met Mr. Smith here a few hours ago—the first time I ever saw the gentleman.

152 Q. Did you tell him what you knew about it?

A. No, sir.

153. He didn't ask you anything about it?

A. He didn't ask me any questions.

154. You got your pay—all Mr. Ott owed you?

A. No.

155. How much does he still owe you, if anything?

A. I think about two hundred dollars.

156. How much does he still owe you, if anything?

A. I would have to look at the books to see. My books show a balance of $213.37.

157. Do you know any of the members of the South Branch Lumber Co.?

A. I have met Mr. Beidler here and there.

158. Have you ever talked with Mr. Frank Beidler about what you know in this matter?

A. No, sir.

159. Did he call to see you when he was here to talk with you?

A. He never called on us.

160. Did any one else from the South Branch Lumber Co. call on you and talk with you about it?

A. No, sir.

161. Have you had any talk with Mr. Ott since his as-
329 signment about what you were going to swear to?

A. No, sir; I didn't suppose there was going to be anything to swear to.

162. You see Mr. Cook every day, do you?

A. Almost every day.

163. Will you give the date when you first told him what you knew about this matter as near as you can?

A. I cannot possibly.

164. How near can you come to it?

A. It was since Mr. Ott's failure.

165. Was it within a week after the failure?

A. Maybe it was a short time afterwards; I think quite a short time afterwards.

166. Mr. Cook is your attorney?

A. Yes, sir.

167. You do all his building for him?

A. Not all; no, sir.

168. Did you tell him of this after you had seen it published in the paper that this suit of the South Branch Lumber Co. had been brought by Cook & Dodge & Hirschl?

A. No, sir.

169. Mr. Hirschl rents an office of you?

A. Yes, sir.

170. You see him every day?

A. Yes, sir.

171. When did you first tell him about it?

A. I don't think I ever told him about it in my life—about this case.

172. When did you first tell Mr. Hirschl what Mr. Ott had said about it? Do you mean to say you never talked with Mr. Hirschl at all about your evidence?

A. I have no recollection of ever talking to him about it.

330 173. So far as you recollect you never said anything to him about it?

A. Yes, sir.

This is all at present.

174. Do you swear that this stone quarry under consideration here is limestone?

A. It is called limestone.

175. Will you swear that it is not sandstone instead of limestone?

A. There is some sandstone there and limestone in the same quarry.

176. Isn't all the stone that has ever been taken out of that quarry sandstone instead of limestone?

A. No, sir.

177. Will you swear that it is not?

A. I will swear that it is not.

178. Is there more than one quarry there?

A. Two quarries on each side of the creek.

179. How far apart are they?

A. As far as from here to the corner of 3rd street, possibly.

180. Did you and other parties try to get hold of this farm that Mr. Ott has the stone quarry on?

A. We never made an offer.

181. Are you interested in a quarry down there?

A. Yes, sir.
182. How far is your quarry from Mr. Ott's?
A. The next farm.
183. Who else is interested in it?
A. A Mr. Griggs and Mr. Krouse.
184. Is your stone different?
A. Some is different and some of the same kind.
185. Is it lime or sand stone?
A. Both.
186. Both out of the same quarry?
331 A. Both on the same range—the same ravine.

That is all.

Redirect examination by Mr. COOK:

Redirect interrogatory 1. Mr. McClelland, I wish to ask you if you have any recollection of either yourself or your brother consulting with me immediately after the announcement of the assignment in regard to the condition you were in in regard to that draft.

A. My brother, I believe, had some talk with you about that, and possibly I also had some talk with you.

2. You remember either of talking with me or hearing that I had been consulted about the effect of it, whether you could collect it or not?

A. Yes.

3. At that time do you know whether anything was said to me generally about the circumstances under which Mr. Ott left it? Do you recollect or do you know of anything being said?

A. I don't know; I think George does.

4. From that time to this morning have you and I ever exchanged a word in regard to the matter, as far as you recollect?

A. I should swear that from that time to this morning you and I never exchanged a word in regard to the matter, as far as I recollect.

5. And when I called on you this morning in a general way what did I say to you?

A. You asked me if, in the first place—if my brother was in. I told you he was out of town. Then you asked me about some of this matter of this draft. You asked me if I was the party which Mr. Ott gave the draft to. You asked me if George was. I
332 think you supposed George was, and I said I was. He said you are the party I want to come down and give a deposition to-day.

6. Now, Mr. McClelland, I show to you a document pasted in the invoice book of George Ott, which was introduced as Exhibit No. 10 to the deposition of William Heesch, and the invoice dated Davenport, Iowa, Feb'y 19th, 1886, on the bill-head of T. W. McClelland & Co., showing that George Ott bought of T. W. McClelland, then the bill following figured up to $904.17, and marked on the bill due June last, 1886, and ask you if that is the invoice that was made out by McClelland & Co. and the same invoice referred to in the ledger entry.

A. That is our invoice.

7. In whose handwriting are the words due June 1st, 1886?

A. In the same handwriting—my brother's handwriting.

8. Now, I will ask you if, after looking at that invoice, you are able to state when the bill for that goods named there became due under the contract of sale.

A. Became due sixty days from that time.

9. I ask you to look at the bill—the margin of it.

A. I presume that it is according to the arrangement. That is in the same handwriting.

The plaintiffs offer in evidence the bill referred to, to be marked by the notary, and marked as Exhibit A to this deposition.

(Signed) T. W. McCLELLAND.

STATE OF IOWA, } ss:
Scott County, }

Subscribed and sworn to by the said T. W. McClelland on the 27th day of April, 1886, before me, Flora Haddix, a notary public in and for Scott county, Iowa.

333 Witness my hand and notarial seal the day and year last above written.

[SEAL.] (Signed) FLORA HADDIX.

EXHIBIT "A."

French and American plate glass, English, French, and American window glass, enamelled glass, white lead, and oils.

Terms cash. Express charges must be prepaid. No allowance for breakage or damage after leaving store.

T. W. McClelland. G. P. McClelland.

DAVENPORT, IOWA, *Feb'y 19th*, 1886.

M-. Geo. Ott bought of T. W. McClelland & Co., manufacturers of sash, doors, blinds, etc., 304 to 312 Main street.

Due June 1st, 1886.

Green,	66	rolls,	22		121 00
"	80	"	24	160 00	
Drab,	36	"	24	72 00	
					232 00
Green,	28	"	26	60 66⅔	
Drab,	19	"	26	41 16⅔	
					101 83½
Green,	5	"	28	11 66⅔	
Drab,	4	"	28	9 33⅓	
					21 00⅓
Green,	3	"	30	7 50	
Drab,	2	"	30	5 00	
					12 50

in value, and said child *are* possessed of and entitled to personal property not exceeding four hundred and fifty (450) dollars in value; that your petitioner is the mother of the said Addie Kloppenburg. Your petitioner asks that George Ott, her father, of Davenport township, in said county, be appointed guardian of the property of the said child.

359 Your petitioner further states that the said George Ott is a suitable person to be appointed such guardian and consents to act in that capacity, if appointed, and to give the requisite bonds. Petitioner therefore asks that the court will take the above matter into consideration and grant the prayer of said petition.

Dated the 17th day of November, A. D. 1874.

LORENA KLOPPENBERG, *Petitioner.*

STATE OF IOWA, } ss:
Scott County, }

I, Elora Kloppenburg, the above-named petitioner, being duly sworn, on oath say that the statements contained in the above petition are true, as I verily believe.

LORENA KLOPPENBERG, *Petitioner..*

Signed in my presence by the said Eleonare Kloppenburg and by her sworn to before me this 17th day of November, A. D. 1874.

[SEAL.] B. L. PETERS, *N. P.*

And still, on said 17th day of November, 1874, there was filed in said matter the bond of George Ott as guardian, which is as follows, to wit:

Know all men by these presents that George Ott, as principal, and Ed. Ahrens, as sure*ties*, all of the county of Scott and State of Iowa, are held and firmly bound unto said county for the use of Addie Kloppenberg in the penal sum of fourteen hundred (1,400) dollars; for the payment of which, well and truly to be made, we do jointly and severally bind ourselves and our lawful representatives.

360 Witness our hands and seals this 17th day of November, 1874.

The condition of the above obligation is such that if the above-named George Ott, who has been appointed guardian of the said Addie Kloppenburg, shall faithfully discharge the office and trust as such guardian according to law, and shall render a fair and just account of such guardianship from time to time whenever thereunto required by law, and render and pay to said minor all monies, goods and chattels, title papers, and effects which may come to the hands or possession of such guardian belonging to such minor when such minor shall be entitled thereto, or to any subsequent guardian should such court direct, then this obligation to be void, or otherwise to remain in full force and virtue.

GEORGE OTT. [SEAL.]
E. A. AHRENS. [SEAL.]

in value, and said child *are* possessed of and entitled to personal property not exceeding four hundred and fifty (450) dollars in value; that your petitioner is the mother of the said Addie Kloppenburg. Your petitioner asks that George Ott, her father, of Davenport township, in said county, be appointed guardian of the property of the said child.

359 Your petitioner further states that the said George Ott is a suitable person to be appointed such guardian and consents to act in that capacity, if appointed, and to give the requisite bonds. Petitioner therefore asks that the court will take the above matter into consideration and grant the prayer of said petition.

Dated the 17th day of November, A. D. 1874.

LORENA KLOPPENBERG, *Petitioner.*

STATE OF IOWA, } ss:
Scott County, }

I, Elora Kloppenburg, the above-named petitioner, being duly sworn, on oath say that the statements contained in the above petition are true, as I verily believe.

LORENA KLOPPENBERG, *Petitioner.*

Signed in my presence by the said Eleonare Kloppenburg and by her sworn to before me this 17th day of November, A. D. 1874.

[SEAL.] B. L. PETERS, *N. P.*

And still, on said 17th day of November, 1874, there was filed in said matter the bond of George Ott as guardian, which is as follows, to wit:

Know all men by these presents that George Ott, as principal, and Ed. Ahrens, as sure*ties*, all of the county of Scott and State of Iowa, are held and firmly bound unto said county for the use of Addie Kloppenberg in the penal sum of fourteen hundred (1,400) dollars; for the payment of which, well and truly to be made, we do jointly and severally bind ourselves and our lawful representatives.

360 Witness our hands and seals this 17th day of November, 1874.

The condition of the above obligation is such that if the above-named George Ott, who has been appointed guardian of the said Addie Kloppenburg, shall faithfully discharge the office and trust as such guardian according to law, and shall render a fair and just account of such guardianship from time to time whenever thereunto required by law, and render and pay to said minor all monies, goods and chattels, title papers, and effects which may come to the hands or possession of such guardian belonging to such minor when such minor shall be entitled thereto, or to any subsequent guardian should such court direct, then this obligation to be void, or otherwise to remain in full force and virtue.

GEORGE OTT. [SEAL.]
E. A. AHRENS. [SEAL.]

The above bond was approved and filed by me this — day of ——, 18—.

Attest: —— ——, *Clerk Circuit Court.*
—— ——, *Deputy.*

STATE OF IOWA, }
Scott County, } *ss:*

I, George Ott, do solemnly swear that I will discharge all and singular the duties of guardian of the person and estate of the within-named Addie Kloppenburg according to the tenor and effect of the within-written bond and according to law and to the best of my ability.

361 GEORGE OTT.

Subscribed in my presence by George Ott and by him sworn to before me this 17th day of November, A. D. 1874.

[SEAL.] BL. PETERS, *N. P.*

I, Edward Ahrens, of Davenport, Iowa, on oath depose and say that I am a resident of the State of Iowa, and worth double the sum to be secured by the within bond beyond the amount of my debts, and have property liable to execution in this State equal to the sum to be secured.

E. A. AHRENS.

Subscribed in my presence and sworn to before me by Edward A. Ahrens this 17th day of November, 1874.

[SEAL.] BL. PETERS, *N. P.*

Thereafter, on said 17th day of November, 1874, an order was entered in said matter, which is in words and figures following, to wit:

In the Matter of the Guardianship of ADDIE KLOPPENBURG, a Minor.

Now, on this 17th day of November, 1874, in vacation, comes Eleonora Kloppenburg, mother of said Addie Kloppenburg, by Green & Peters, her attorneys, and makes application to the clerk of this court for the appointment of George Ott as guardian of said minor.

And it appearing from the inspection and evidence pro-
362 duced that the said Addie Kloppenburg is entitled to a certain estate in said county;

And the said George Ott *have* given bond in the penal sum of $1,400 for the faithful performance of his duty as such guardian and having qualified as required by law—

It is ordered that the said George Ott be, and he is hereby, appointed guardian of the said Addie Kloppenburg, and that letter issue to him as such.

Thereafter, on the 17th day of March, 1876, there was issued a citation to George Ott in words and figures following:

STATE OF IOWA, } ss:
Scott County, }

To George Ott, Greeting:

You are hereby cited and required personally to be and appear before the circuit court of the State of Iowa within and for said county, at the court-house, in Davenport, on the 21st day of March, A. D. 1876, at 10 o'clock a. m. of that day, then and there to make report of your doings as guardian of Addie Kloppenburg, a minor.

Witness W. H. Gabbert, clerk of said circuit court, with the seal thereof hereto affixed, at Davenport, this 17th day of March, 1876.

[SEAL.] W. H. GABBERT,
Clerk of the Circuit Court.

On the 21st day of March, 1876, the annual report of George Ott as guardian was filed in said matter. Said report is in
363 words and figures as follows:

Scott County, Iowa, in Probate.

In the Matter of the Guardianship of the Person and Estate of ADDIE KLOPPENBURG, a Minor.

The following is a true and correct statement of the inventory of the estate and effects of the above-named minor on the 21st day of March, A. D. 1876:

Cash received of the estate of Cornelius Kloppenburg, deceased	$600 00
Rent from the farm of deceased, to wit, the east half of the northeast quarter of sect. 16, township 83, range 12 west, in Benton county, Iowa	200 00
Of which two-thirds part belongs to said minor, value	1,500 00
	$2,100 00

George Ott, guardian, in account with Addie Kloppenburg, minor.

DR.

Nov'b'r 16, 1875, to interest on the 600	$60 00
Nov'b'r 1st, 1875, to rent of farm	133 33
	193 33

CONTRA. CR.

Cash paid during the year ending Nov. 16, '75, to Eleonore Kloppenburg, the mother, for boarding, clothing, and nursing said minor	$193 33

364 THE STATE OF IOWA, } ss:
Scott County, }

George Ott, guardian of the person and estate of Addie Kloppenburg, minor, being duly sworn, says that the above is a true and cor-

rect inventory of the personal effects of said minor so far as has come to his knowledge, and it is also a just and true account of his guardianship of the property received and expended by him in the performance of his said trust during the time ending March 21, 1876.

GEORGE OTT.

Subscribed in my presence and sworn to before me by George Ott this 21st day of March, A. D. 1876.

[SEAL.] BL. PETERS,
Notary Public, Scott Co., Iowa.

On the 22nd day of March, 1876, the citation to George Ott was returned and filed, endorsed:

Served March 17th, '76, by reading and giving copy to George Ott, in Davenport, Scott Co., Iowa.

H. LEONARD, *Sheriff*,
By F. W. KOCH, *Deputy*.

Fees, .90.

At a term of the circuit court of the State of Iowa, in and for Scott county, began and holden at Davenport, in said county, on the 21st day of March, 1876—present, D. W. Ellis, sole presiding judge of said court; Harvey Leonard, sheriff of Scott county, and W. H. Gabbert, clerk of said court—when the following proceedings
365 were had on the 23rd day of March, 1876, it being still during said term of court.

In the Matter of the Guardianship of ADDIE KLOPPENBURG.

On this day this matter coming on for hearing on the report of George Ott, guardian of said minor (said report having been filed in this court March 21, 1876), said guardian appearing by Green & Peters, his attorneys, and the court, having heard said report read and being fully advised in the premises, ordered that the same be approved, with the exception of the amount paid by said guardian to the mother of said minor for said minor's support, which is hereby wholly disallowed and charged to said guardian, said item being the sum of $193.00.

On the 27th day of February, 1882, a letter from Green & Peters, attorneys, to D. C. Richman, then district judge, was filed, a copy of which is as follows:

John W. Green. Bleik Peters.

Green & Peters, attorneys-at-law, room 5 Newcomb House block.

DAVENPORT, IOWA, *Feb. 24th*, 1882.

Hon. D. R. Richman, Muscatine, Iowa.

SIR: We most respectfully request your honor to sign the within direction for George Ott, Sen., guardian of Addie Kloppenburg, to settle with the C., M. & St. P. R. R. the damages assesssed upon ⅔

part of land owned by said minor in Benton Co., Iowa, as endorsed upon the enclosed guardian's deed, duly acknowledged and
366 containing also a certificate of clerk showing the appointment and qualification of said guardian. Cornelius Kloppenburg died November 14th, 1874, seized with E. ½ N. E. ¼, 16, 83, & 12 W., in Benton Co., Iowa, and leaving issue one child, Addie K., born Mar. 17, '74, and his widow, Eleonore Kl., whose father, George Ott, was appointed guardian upon her application Nov. 17, '74. The child owned therefore ⅔ds of the estate, which is valued in guardian's inventory at $1,500, and bringing a rent of $133.33 (the whole 80, $200.00). The land has been condemned in July, 1881. Under these circumstances we request your honor to sign the enclosed order under § 1246 of the Code, and have the honer to remain,

Very respectfully your ob'd't,

GREEN & PETERS.

Clerk will please file this letter among papers in Ott guardianship case.

D. C. RICHMAN,
Circuit Judge.

On the 3rd day of August, 1885, a citation was issued to said George Ott, guardian, which was as follows:

THE STATE OF IOWA, } ss:
Scott County, }

To George Ott, guardian, Greeting:

You are hereby cited and required personally to be and appear before the circuit court of the State of Iowa within and for said county, at the court-house, in Davenport, between the
367 14th and 30th days of September, A. D. 1885, at 9 o'clock a. m. of that day, then and there to make report, as required by law, in the matter of the guardianship of Addie Kloppenburg.

Witness W. J. Birchard, clerk of said circuit court, with the seal thereof hereto affixed, at Davenport, this 3rd day of August, A. D. 1885.

[SEAL.]

W. J. BIRCHARD,
Clerk of the Circuit Court.

On the 6th day of August, 1885, said citation was filed, endorsed:

STATE OF IOWA, } ss:
Scott County, }

I hereby certify that I served this citation on George Ott, the within-named guardian, at the township of Davenport, in said county, on the 5th day of August, 1885, by reading the same to him and delivering a true copy to him.

NAT. LEORNARD,
Sheriff Scott County, Iowa,
By J. GROBE.

Fees, 2.30.

Be it remembered that at a term of the circuit court of the State of Iowa in and for Scott county, begun and holden at Davenport, in said county, on the 14th day of September, 1885—present, Hon. Nathaniel French, sole presiding judge of said court; Nat. Leonard, sheriff of Scott county, and W. J. Birchard, clerk—when the following, among other, proceedings were had, to wit:

368 STATE OF IOWA, *Scott County:*

In the Matter of the Guardianship of the Person and Estate of ADDIE KLOPPENBERG.

Now comes George Ott, guardian of Addie Kloppenburg, and renders the court his account and shows—

That according to his last report, filed March 21st, 1876, your guardian has in his possession in cash	$600	00
And the E. ½ N. E. ¼, sect. 16, township 83, range 12 W., in Benton conty, Ia., of which said ward owns ⅔rds parts. Since that time he has collected rents on said farm, interest:		
For 1877	123	33⅓
For 1878	123	33⅓
For 1879	123	33⅓
For 1880	123	33⅓
For 1881	117	26⅔
For 1882	121	33⅓
For 1883	122	
For 1884	121	62
1882.		
March 6. Cash from Chicago, Mil. & St. Paul R. R. Co. for right of way through said land, as per order of court Feb. 24, 1882	183	33⅓
1885.		
March 29. Cash received as said ward's share from her grandfather's estate in Benton Co., Iowa	884	55
Total	2,644	43⅔

369 Your guardian has expended—

1885.		
March —. Cash paid for power of attorney, $2.00, and for travelling expenses to Vinton, Benton Co., $7.56	9	56
Cash to attorney fees	18	00
	27	56
Carried over	27	56
1885.		
Sept. 1. To attorneys' fees & cost	20	00
Total	47	50

Leaving the total assets of the estate $2,596.93⅔.

The interest on the several sums up to March the 1st, 1885, at 7 per cent. per annum, amounting to $656.48, added to $2,596.93⅔—total, $3,253.41⅔.

Besides this, your guardian has conveyed to said ward one-third part of the farm in Benton Co., so that his ward will be entitled to the whole rent from and after the 1st day of March, 1885.

Wherefore your guardian prays your honorable court that this his report be approved and confirmed; that he be charged with the amount of $3,253.41, with 7 per ct. interest from March 1st, 1885, and that he be ordered to continue in the execution of his duties as guardian.

GEORGE OTT.

STATE OF IOWA, *Scott County:*

370 I, George Ott, on oath say that I am the guardian named in the above report; that I know the contents thereof, and that the same is correct and true.

GEORGE OTT.

Subscribed in my presence and sworn to before me by George Ott this 28th day of September, 1885.

[SEAL.] BLEIK PETERS,
Notary Public, Scott Co., Iowa.

Order.

On this 30th day of September, 1885, the above report is presented in open court by Green & Peters, attorneys for said guardian; and now the court, having heard and considered the same, it is ordered that said guardian do invest the funds of his said ward as required by general probate order of date September 29th, 1883, recorded at Probate Record 28, at page 76.

Thereafter, on the 17th day of May, 1886, there was issued a citation to George Ott, guardian, in words and figures as follows:

THE STATE OF IOWA, } ss:
Scott County, }

To George Ott, guardian, Greeting:

You are hereby cited and required personally to be and appear before the circuit court of the State of Iowa within and for said county, at the court-house, in Davenport, on the ——, forthwith, then and there to make a written report, as required by law, of the condition of ward's estate, and whether money was invested in mort-
371 gage security, as ordered by court in the matter of the guardianship of Addie Kloppenburg.

Witness W. J. Birchard, clerk of said circuit court, with the seal thereof hereto affixed, at Davenport, this 17th day of May, A. D. 1886.

W. J. BIRCHARD,
Clerk of the Circuit Court.

Be it remembered that at a term of the circuit court of the State of Iowa in and for Scott county, begun and holden at Davenport, in said county, on the 16th day of March, 1886—present, Hon. Nath'l French, sole presiding judge; Nat. Leonard, sheriff Scott county, and W. J. Birchard, clerk of said court—when, on the 18th day of May, 1886, and still during said term of court, the following proceedings were had:

THE STATE OF IOWA, *Scott County:*

In the Matter of the Guardianship of ADDIE KLOPPENBURG, Minor.

Now comes George Ott, guardian of Addie Kloppenburg, and renders the court his account, and shows—

That according to his last report, filed in the proof September—30th day of September, A. D. 1885—your guardian had in his possession the E. ½ of N. E. ¼, sec. 16, township 83, range 12 west, in Benton county, Iowa, and cash money $3,253.41, which amounted, with 7 p. c. interest from March 1st, 1885, to March 1st, 1886, to $3,481 14

Rent of farm for 1885, collected Feb. 13, '86 ..... 200 00

Total 3,681 14

372 Out of which your guardian has expended for State and Co. taxes on the land for '85 ..... 16 96

For attorneys' fees, 15.00, and costs, 1.50 ..... 16 50

Leaving a balance on hand of 3,647 68

drawing 7 p. c. interest from March 1st, 1886, which amount is secured by chattel mortgage executed by George Ott to Addie Kloppenburg, Feb. 20th, 1886, and recorded April 26th, 1886, in Book Q of Chattels, p. 550, in the recorder's office of Scott county, Iowa, conveying the entire stock of goods, wares, and merchandise, consisting of a general stock of glass, glass windows, doors, window-frames, blinds, sashes, and whatsoever now kept in brick building No. 410 West Front street, and the entire stock of lumber and manufacturing material now on hand and kept upon the premises of the factory of said George Ott in Davenport, Scott county, Iowa, being the first lien upon said described property.

Your guardian respectfully asks this honorable court to be excused for failing to comply with its order with regard to the investment of the funds in real-estate mortgage, and further states that circumstances beyond his control induced him to execute an assignment of all his property for the benefit of his creditors on the 27th day of April, A. D. 1886, and for this reason he is desirous of resigning his trust as guardian of the estate of his said ward, Addie Kloppenburg. He therefore prays that the above may be considered and allowed as his final report of his proceedings of such guardian, to the end that a successor may be appointed and that he may

373 be released therefrom.

GEORGE OTT, *Guardian.*

STATE OF IOWA, }
Scott County. }

I, George Ott, on oath say that I am the guardian named in the foregoing petition and report; that I know the contents thereof, and that the matter and things therein stated are true.

GEORGE OTT.

Subscribed in my presence and sworn to before me by George Ott this 18th day of May, 1886.

[SEAL.]

BLEIK PETERS,
Notary Public, Scott Co., Ia.

Order.

Now, on this 18th day of May, 1886, this matter coming on for hearing on the report of the guardian, Geo. Ott, and the court being fully advised in the premises, it is found by the court that the guardian has failed to comply with with his duties as guardian, and that a change in the guardianship is desirable, and accordingly the resignation of the guardian is accepted, and in his place Chas. Beiderbecke is appointed guardian of the property of said minor, and is to take all proper steps to protect the ward's interest, including any right she may have under said chattel mortgage mentioned in said report.

The guardian and his bondsman are not released and the matter of their liability is reserved.

NATH'L FRENCH, *Judge.*

374 Thereafter, on the 19th day of May, 1886, the citation issued on the 17th day of May, 1886, was returned and filed, endorsed as follows:

STATE OF IOWA, }
Scott County, } *ss:*

I hereby certify that I served this citation on Geo. Ott, the within-named guardian, at the township of city of Davenport, in said county, on the 17th day of May, 1886, by reading the same to him and by delivering a true copy to him.

NAT. LEONARD,
Sheriff of Scott County, Iowa,
By R. S. QUINN, *Deputy.*

Fee, 2.30.

On the 22nd day of May, 1886, the bond of Chas. Beiderbecke, guardian, was approved and filed; which bond is as follows, to wit:

Know all men by these presents that Charles Beiderbecke, as principal, and Robert Krouse and Frank H. Miller, as sureties, all of the county of Scott, in the State of Iowa, are held and firmly bound unto said county, for the use of Addie Kloppenburg, a minor child of Cornelius Kloppenburg and adopted daughter of Geo. Ott,

of Davenport, in the penal sum of seven thousand five hundred dollars; for the payment of which, well and truly to be made, we do jointly and severally bind ourselves and our lawful representatives.

Witness our hands and seals this 22nd day of May, 1886.

The condition of the above obligation is such that if the above-named Charles Beiderbecke, who has been appointed guardian of the property of the said Addie Kloppenburg, shall faithfully discharge
375 the office and trust of such guardian according to law, and shall render a fair and just account of such guardianship from time to time, whenever thereunto required by law, and render and pay to said minor all monies, goods, and chattels, title, papers, and effects which may come to the hands or possession of such guardian belonging to such minor, when such minor shall be entitled thereto, or to any subsequent guardian, should such court so direct, then this obligation to be void, or otherwise to remain in full force and virtue.

CHAS. BEIDERBECKE. [SEAL.]
ROB'T KRAUSE. [SEAL.]
FRANK H. MILLER. [SEAL.]

The above bond is approved and filed by me this 22nd day of May, 1886.

Attest: W. J. BIRCHARD, *Clerk.*
A. A. BALLUFF, *Deputy.*

STATE OF IOWA, } ss:
Scott County, }

We, Robert Krause and Frank H. Miller, being duly and severally sworn, on oath, and each for himself, says that he is a resident of the State of Iowa; that he is one of the above-named sureties on the foregoing bond; that he is worth the sum of seven thousand and five hundred (7,500) dollars over and above his demands and liabilities, and that he has property liable to execution in the State of Iowa equal to the sum of seven thousand and five hundred (7,500) dollars.

ROBERT KRAUSE.
FRANK H. MILLER.

Subscribed and sworn to before me by Robert Krause and
376 Frank H. Miller this 22nd day of May, A. D. 1886.

[SEAL.] BLEIK PETERS,
Notary Public.

STATE OF IOWA, } ss:
Scott County, }

I, Charles Beiderbecke, do solemnly swear that I will discharge all and singular the duties of guardian of estate of the within-named Addie Kloppenburg according to the tenor and effect of the within-written bond and according to law and to the best of my ability.

CHAS. BEIDERBECKE.

Subscribed in my presence by Charles Beiderbecke and by him sworn to before me this 22nd day of May, A. D. 1886.

[SEAL.] BLEIK PETERS,
Notary Public, Scott Co., Ia.

And still, during the term of court last hereinbefore recited, the following order was entered of record:

In the Matter of the Guardianship of ADDIE KLOPPENBURG.

On this 22nd day of May, 1886, comes Chas. Beiderbecke, who was heretofore by this court appointed guardian of the estate of said minor, and tenders to the clerk of this court his bond in the penal sum of seven thousand five hundred dollars, signed by Robert Krause and F. H. Miller as sureties, which bond and sureties are hereby approved and duly recorded in Guardian's Bond Record No. 2, page 444, and he having taken the oath of office required by law, thereupon letters of guardianship of the estate of said minor are issued to him in accordance with the previous order of this court.

377 On the 22nd day of June, 1887, there was filed in said matter an inventory in words and figures following:

Inventory.

In the Circuit Court of the State of Iowa in and for Scott County.

In the Matter of the Estate of ADDIE KLOPPENBURG, Minor.

General assets.

Article I. Promissory note of $3,500, with 7 p. c. p. a. interest from March 1st, 1885, given by George Ott to Addie Kloppenburg February 20th, 1886, and secured by chattel mortgage on his stock of goods, wares, and merchandise contained in brick store No. 410 West Front street, and the entire stock of lumber and manufacturing material on hand and kept upon the premises of his factory, in Davenport, Iowa, dated same date, and recorded in Scott County, Iowa, Record Book of Chattels, page 550.

II. One duplicate indenture of lease dated March 5th, 1883, executed by George Ott to John Allears for the east half of the northeast quarter of section sixteen (16), township eighty-three (83), range 12 west, of the 5th P. M., at the rent of two hundred (200) dollars per year, payable Jan'y the 1st, 1887, 1888, 1889, 1890, 1891, 1892.

STATE OF IOWA, } ss:
Scott County, }

378 I, Charles Beiderbecke, guardian of the above-named estate, do hereby certify that the above and foregoing is a true and perfect inventory of all personal effects of the said deceased, so far as the same have come to my knowledge.

Dated June 21st, 1886.

CHAS. BEIDERBECKE,
Guardian of said Estate.

At a term of the circuit court of the State of Iowa in and for Scott county, begun and holden at Davenport, in said county, on the 6 day of December, 1886—present, Hon. Nath'l French, sole presiding judge; Nat. Leonard, sheriff of Scott county, and W. J. Birchard, clerk of said court—when the following, among other, proceedings were had on the 22nd day of December, 1886:

In the Circuit Court of the State of Iowa in and for Scott County.

In the Matter of the Guardianship of ADDIE KLOPPENBURG.

Petition for the Support of Ward.

Now comes Charles Beiderbecke, guardian of the property of Addie Kloppenburg, and states to this hon. court that said ward, Addie Kloppenburg, is now about 12 years and 9 months old, and that George Ott, who has adopted her, is unable to furnish the means for her support in a style commensurate with the income of her estate; that for her nurture, support, and education the yearly sum of $200 *are* needed, which may be taken from the income of her estate without encroachment upon the principal.

379 Your guardian therefore asks that he may be allowed to pay for the nurture, support, and education of his said ward, Addie Kloppenburg, the annual sum of two hundred (200) dollars in half-yearly installments, commencing from the first of July, 1886.

CHARLES BEIDERBECKE,
By BLEIK PETERS, *His Att'y.*

THE STATE OF IOWA, } ss:
Scott County, }

I, Charles Beiderbecke, on oath say that I am the guardian of Addie Kloppenburg named in the foregoing petition; that I have read the same and know the contents thereof, and that the matters and facts therein stated are true, as I verily believe.

CHARLES BEIDERBECKE.

Subscribed in my presence and sworn to by Chas. Beiderbecke this 20th December, 1886.

[SEAL.] BLEIK PETERS,
Notary Public.

Order.

Now, this 22nd day of December, 1886, this matter coming up to be heard and the court being fully advised in the premises, it is ordered that the prayer of the foregoing petition be granted.

(Signed) NATH'L FRENCH, *Judge.*

On the 27th day of December, 1886, and still during the term of court last hereinbefore recited the following proceedings were had, to wit:

380 In the Circuit Court of the State of Iowa in and for Scott County.

In the Matter of the Guardianship of ADDIE KLOPPENBURG.

Petition to Allow the Guardian to Pay Att'y's Fees, &c.

Charles Beiderbecke, guardian of the property of Addie Kloppenburg, respectfully represents to this honorable court that he has employed Bleik Peters, his counsel, to attend to the legal proceedings in said matter as are required by law and also as are necessary to protect said ward's interest in the estate of one George Ott under his general assignment for the benefit of his creditors; that said counsel has presented to him his bill for professional services and cash money expended in said guardianship to the amount of $149.75, which bill is hereto attached and made part hereof. Your guardian therefore asks this hon. court to allow him to pay said bill out of the funds of said estate.

CH. BEIDERBECKE, *Guardian.*

THE STATE OF IOWA, } ss:
Scott County, }

I, Charles Beiderbecke, on oath say that I am the guardian named in the above petition; that I have read the same and know the contents thereof, and that allegations therein contained are true, as I verily believe.

CH'S BEIDERBECKE.

Subscribed in my presence and sworn to before me by Charles Beiderbecke this 27th day of December, A. D. 1886.

[SEAL.] BLEIK PETERS,
Notary Public, Scott Co., Ia.

381 Charles Beiderbecke, guardian of Addie Kloppenburg, to Bleik Peters, Dr.

1886.				
Ap'l	26.	To cash for recording chattel m'tge	1	00
May	19.	" retainer for appointing Charles Beiderbecke guard	10	00
		" cash, clerk's costs	8	
June	22nd.	" retain suits *vs.* Meyer, assignee	25	
July	22nd.	" filing claim with assignee	5	
Oct.	22nd.	" appearance Scott dist. court, No. 15943	15	
"	"	" " " " " 15948	15	
"	"	" " " " " 15954	15	
"	"	" " U. S. c'r't c'rt, Keokuk.		
Dec.	3rd.	" answer " " " " "	50	
Dec.	22nd.	To petition to support ward	5	00
		" clerk's costs		75
			149	75

Order.

Now, this matter coming up for a hearing in the matter of the guardian's petition to allow the payment of attorney's fees and the court being advised fully in the premises, it is ordered that the petition be granted.

NATH'L FRENCH, *Judge.*

STATE OF IOWA, } ss:
Scott County, }

I, W. J. Birchard, clerk of the district court of the State of Iowa in and for said county, do hereby certify that the above and foregoing is a true and perfect transcript of the record entry of all
382 proceedings had and of all papers filed and process issued in above-entitled cause as fully as the same remains on record and file in my office.

And I further certify that said district court now has and exercises full authority and jurisdiction over the records and proceedings of said circuit court for the purpose of the authenticating and enforcement of all judgments, decrees, orders, and proceedings thereof; that said records are now in my custody and under my control, and that I am the proper officer to make this certificate.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the court-house, in Davenport, in said county, this 14th day of April, 1887.

W. J. BIRCHARD,
Clerk District Court.

STATE OF IOWA, } ss:
Scott County, }

Be it remembered that heretofore, to wit, at a term of the circuit court of the State of Iowa, begun and held at Davenport, in and for said county, on the second Monday in September, A. D. 1883—present, the Hon. Nath'l French, judge of the second circuit of the seventh judicial district of the State of Iowa; Nat. Leonard, sheriff of said county, and W. J. Birchard, clerk of said court—and on the 29th day of September, A. D. 1883, and still during said term of said court, the following, among other, proceedings
383 were had therein, to wit:

General Probate Order.

All guardians and trustees are authorized to invest the trust moneys held by them in stocks and bonds of the State of Iowa or of the United States or proper bonds and mortgages of real property, and such guardians and trustees are directed to so invest such trust moneys except when otherwise ordered by the court and except when the duration of the trust or other cause may render such investment inadvisable.

NATH'L FRENCH,
Circuit Judge, 2nd Circuit, 7th Jud. District.

STATE OF IOWA, } ss:
Scott County, }

I, W. J. Birchard, clerk of the district court of the State of Iowa in and for said county, do hereby certify that the above and foregoing is a true and perfect transcript of the record entry of general probate order of date September 29th, 1883, as fully as the same remains on record in my office.

And I further certify that said district court now has and exercises full authority and jurisdiction over the records and proceedings of said circuit court for the purpose of the authentication and enforcement of all judgments, decrees, orders, and proceedings thereof; that said records are now in my custody and under my control, and that I am the proper officer to make this certificate.

384 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the court-house, at Davenport, in said county, this 14th day of April, A. D. 1887.

[SEAL.] W. J. BIRCHARD,
Clerk District Court.

385 The following is a copy of the attachment papers in the case wherein The South Branch Lumber Company is complainant and George Ott is defendant, begun in the district court of Scott county and afterwards transferred to the circuit court of the United States at Keokuk, to be used in evidence in the above case, in chancery, by stipulation, and reads in words and figures as follows, to wit:

In the Circuit Court of the United States in and for the Eastern Division, Southern District of Iowa.

SOUTH BRANCH LUMBER CO. }
vs. }
GEORGE OTT. }

Cook & Dodge & A. J. Hirschl, for plaintiff; Bills & Block for defendant.

Transcript from the District Court of Scott County, Iowa.

SOUTH BRANCH LUMBER CO. }
vs. }
GEORGE OTT. }

On the 28th day of April, 1886, the plaintiff filed in the district court of Iowa in and for Scott county its petition in words and figures following, to wit:

386 STATE OF IOWA, } ss:
County of Scott, }

In the District Court.

SOUTH BRANCH LUMBER CO. }
vs. } Petition. Attachment.
GEORGE OTT. }

The plaintiff is a corporation organized under the laws of the State of Illinois, having its principal place of business at the city of Chicago, Illinois.

It claims of the defendant, George Ott, for money due and to become due by contracts, hereinafter set out, the sum of thirty-seven thousand and one hundred ninety-one dollars and 69 cents ($37,191.69), with interest thereon according to the tenor of the certain promissory notes hereinafter referred to; also upon the account hereinafter referred to, with interest at the rate of six (6) per cent. per annum; and for cause of such claim the plaintiff states—

1st. That on or about the 23rd day of January, 1886, the defendant executed and delivered to the plaintiff his certain promissory note of that date, due ninety days after date, at the First National Bank of Davenport, Iowa, for the sum of $1,200.00. A copy of the said note is as follows:

"$1,200.00. DAVENPORT, IOWA, *Jan'y 23rd*, 1886.

"Ninety days after date I promise to pay to the order of the South Branch Lumber Co. twelve hundred dollars at the First National Bank, at Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

387 Plaintiff alleges that said note is due; that no part thereof has been paid; that it is the owner and holder thereof, and that said note draws interest at the rate of six per cent. per annum after maturity.

2nd. That on or about the 16th day of April, 1886, the defendant executed and delivered to the plaintiff his certain promissory note in the words and figures following, to wit:

"$2,300.00. DAVENPORT, IOWA, *April* 16, 1886.

"On demand after date I promise to pay to the order of South Branch Lumber Co. twenty-three hundred dollars at the First National Bank of Davenport, Iowa, value received, with interest at 8 % per annum.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of said note, and that on the 28th day of April, 1886, at Davenport, Iowa, it demanded payment of said note, which was refused. Plaintiff alleges that no part of said note has been paid, and that the same draws interest as specified therein.

3. That on or about the 19th day of April, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"$600.00. DAVENPORT, IOWA, *April 19th*, 1886.

"On demand I promise to pay to the order of South Branch Lumber Co. six hundred dollars, with interest, at 8 % per annum, until paid, at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

388 Plaintiff alleges that it is the owner and holder of the said note, and that on the 28th day of April, 1886, at the city of Davenport, Iowa, it demanded payment of said note, which was refused. Plaintiff avers that no part of the said — has been paid, and that the same draws interest from this date at the rate of 8 per cent. per annum.

4th. That on or about the 29th day of Jan., 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"$1,100.00. DAVENPORT, IOWA, *Jan'y 29th*, 1886.

"Ninety days after date I promise to pay to the order of the South Branch Lumber Co. eleven hundred dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of the said note; that no part thereof has been paid, and that time only is wanted to fix an actual indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

5th. That on or about the 13th day of February, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"$1,600.00. DAVENPORT, IOWA, *Feb. 13th*, 1886.

"Ninety days after date I promise to pay to the order of South Branch Lumber Co. sixteen hundred dollars at the First
389 National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness: that said note draws interest from maturity at the rate of six per cent. per annum.

6. That on or about the 16th day of Febr'y, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"$4,730.24. DAVENPORT, IOWA, *Feb. 16th*, 1886.

"Ninety days after date I promise to pay to the order of South

Branch Lumber Co. forty-seven hundred and thirty $\frac{24}{100}$ dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

7th. That on or about the 20th day of Febr'y, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"$2,346.37. DAVENPORT, IOWA, *Febr'y 20th*, 1886.

"Ninety days after date I promise to pay to the order of
390 South Branch Lumber Co. twenty-three hundred forty-six $\frac{37}{100}$ dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

8th. That on or about the 24th day of February, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"$225.00. DAVENPORT, IOWA, *Febr'y 24th*, 1886.

"Ninety days after date I promise to pay to the order of South Branch Lumber Co. two hundred twenty-five dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

9. That on or about the first day of March, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

391 "$1,600.00. DAVENPORT, IOWA, *March 1st*, 1886.

"Ninety days after date I promise to pay to the order of the South Branch Lumber Co. sixteen hundred dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

10th.

That on or about the 5th day of March, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"$300.00. DAVENPORT, IOWA, *March 5th*, 1886.

"Ninety days after date I promise to pay to the order of the South Branch Lumber Co. three hundred dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

11th.

That on or about the 8th day of March, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

392 "$425.00. DAVENPORT, IOWA, *March 8th*, 1886.

"Ninety days after date I promise to pay to the South Branch Lumber Co. four hundred twenty-five dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the holder and owner of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

12th.

That on or about the 18th day of March, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"2,000.00. DAVENPORT, IOWA, *March 18th*, 1886.

"Ninety days after date I promise to pay to the order of South Branch Lumber Co. two thousand dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the holder and owner of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

13th.

That on or about the 23rd day of March, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

393 $2,535.21. DAVENPORT, IOWA, *March 23rd*, 1886.

"Ninety days after date I promise to pay to the order of the South Branch Lumber Co. twenty-five hundred thirty-five & $\frac{21}{100}$ths dollars at the First National Bank of Davenport, Iowa, valued received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

14th.

That on or about the 27th day of March, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"$1,000.00. DAVENPORT, IOWA, *March 27th*, 1886.

"Ninety days after date I promise to pay to the order of the South Branch Lumber Co. one thousand dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

15.

That on or about the 30th day of March, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"$1,600.00. DAVENPORT, IOWA, *March 30th*, 1886.

394 "Ninety days after date I promise to pay to the order of South Branch Lumber Co. sixteen hundred dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

16th.

That on or about the 16th day of Feb'y, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"$5,698.82. DAVENPORT, IOWA, *Feb'y 16th*, 1886.

"On June 1st, after date, I promise to pay to the order of South Branch Lumber Co. fifty-six hundred ninety-eight & $\frac{82}{100}$ths dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

17th.

That on or about the 1st day of March, 1886, the defendant did execute and deliver to the plaintiff his certain promissory note in the words and figures following, to wit:

"$3,968.38. DAVENPORT, IOWA, *M'ch 1st*, 1886.

395 "On June 15th, after date, I promise to pay to the order of South Branch Lumber Co. thirty-nine hundred sixty-eight $\frac{38}{100}$ths dollars at the First National Bank of Davenport, Iowa, value received.

"(Signed) GEORGE OTT."

Plaintiff alleges that it is the owner and holder of the said note; that no part thereof has been paid, and that time only is wanted to fix an absolute indebtedness; that said note draws interest from maturity at the rate of six per cent. per annum.

18th.

Plaintiff further avers that since the 1st day of January, 1886, it has sold and delivered to the defendant certain goods, wares, and merchandise and paid certain items of freight, so that the total amount thereof, not evidenced by any promissory note, draft, or acceptance, *in* the sum of three thousand nine hundred and fifty-five dollars and thirty-five cents ($3,955.35), and that it has been agreed between the plaintiff and the defendant that the said balance of $3,955.35 is the correct balance of such account. Plaintiff further avers that the sales of said goods, wares, and merchandise were made from time to time during the months of February and March, 1886, under a verbal agreement that payment therefor should be made in ninety days from the dates of the respective sales, and avers that all of the said accounts will become due in the month of May or June, 1886, and that nothing but time is wanting to fix an absolute indebtedness.

It further avers that the amount of the said account will
396 draw interest at the rate of six per cent. per annum from the maturity thereof.

19th.

Plaintiff further avers that the said George Ott has disposed of his property, in whole or in part, with intent to defraud his creditors. Plaintiff further avers that all of the indebtedness hereinbefore described was incurred for property obtained under false pretences.

Wherefore plaintiff demands judgment for the amount first herein stated, with interest and costs, and for a writ of attachment against the property of the said defendant, as provided by law.

COOK & DODGE AND
A. J. HIRSCHL,
Atty's for Pl'tff.

STATE OF IOWA, }
County of Scott, } *ss:*

I, Francis Beidler, being first duly sworn, on my oath do state that I am the secretary of South Branch Lumber Co., a corporation organized and existing under the laws of the State of Illinois; that said corporation is the plaintiff in the foregoing-entitled cause; that I have heard read the said petition, know the contents thereof, and all the statements therein contained are true, as I verily believe.

FRANCIS BEIDLER.

Subscribed in my presence by the said Francis Beidler and by him sworn to before me this 28th day of April, 1886.

EDWARD E. COOK,
[SEAL.] *Notary Public, Scott County, Iowa.*

397 And still, on said 28th day of April, 1886, the plaintiff filed herein an attachment bond in words and figures following:

Attachment Bond.

Know all men by these presents that we, South Branch Lumber Co., a corporation organized under the laws of the State of Illinois, as principal, and F. H. Griggs, Jens Lorenzen, H. H. Andersen, and W. C. Wadsworth, of the county of Scott and the State of Iowa, as sureties, are held and firmly bound unto George Ott (of Scott county, Iowa) in the penal sum of one hundred and eleven thousand five hundred & seventy-six dollars; for the payment of which sum, well and truly to be made unto the said George Ott, his heirs, administrators, or assigns, we hereby severally and jointly bind ourselves, our successors, heirs, administrators, and executors, firmly by these presents.

The condition of the above obligation is such that whereas South Branch Lumber Co., as plaintiff, is about to sue out a writ of attachment from the clerk's office of the district court of the State of Iowa in and for Scott county against George Ott, as defendant,

claiming the sum of thirty-seven thousand one hundred and ninety-one & $\frac{62}{100}$ dollars as money justly owing from said defendant, and asking that a writ of attachment may issue against the property, rights, and credits of said George Ott:

Now, therefore, if the said South Branch Lumber Co. shall well and truly pay unto the said George Ott all the damages which the said George Ott may sustain by reason of the wrongful suing
398 out of said attachment, then this obligation to be void and of no effect; otherwise to remain in full force and virtue.

Witness our hands this twenty-eighth day of April, A. D. 1886, at Davenport, Iowa.

SOUTH BRANCH LUMBER CO., }
FRANCIS BEIDLER, *Sec'y*, } *Principal.*

F. H. GRIGGS, }
JENS LORENZEN, }
H. H. ANDERSEN, } *Sureties.*
W. C. WADSWORTH, }

STATE OF IOWA, }
Scott County, } *ss:*

We, whose names are subscribed, being duly sworn, each for himself says that he is worth the sum of fifty-six thousand dollars beyond the amount of his debts, and has property liable to execution in the State of Iowa equal to twenty-eight thousand dollars.

F. H. GRIGGS.
H. H. ANDERSEN.
W. C. WADSWORTH.
JENS LORENZEN.

Sworn to before me by said F. H. Griggs, H. H. Andersen, W. C. Wadsworth, and Jens Lorenzen, and by each of them subscribed in my presence, this 28th day of April, 1886.

[SEAL.]

F. L. DODGE,
Notary Public, Scott Co., Iowa.

Endorsed: The within bond filed and the sureties approved
399 by me this 28th day of April, A. D. 1886. W. J. Birchard, clerk; A. A. Balluff, deputy.

And still, on said 28th day of April, A. D. 1886, there was issued a writ of attachment in the words and figures following, to wit:

SOUTH BRANCH LUMBER CO. }
vs. } Writ of Attachment.
GEORGE OTT. }

The State of Ohio to the sheriff of Scott county, greeting:

Whereas, in an action commenced in this court and entitled as above, the plaintiff, South Branch Lumber Co., has filed a verified petition claiming of the defendant, George Ott, the sum of thirty-

seven thousand one hundred and ninety-one & $\frac{69}{100}$ (37,191.69) dollars, with interest, now due, asking an attachment, alleging as grounds therefor that said George Ott has disposed of his property, in whole or in part, with intent to defraud his creditors; plaintiff further avers that all the indebtedness was incurred for property obtained under false pretences, and filing a bond as by law required, which has been approved:

Now, therefore, you are commanded to attach of the property of the said George Ott in your county, save only such as is exempt from execution, a sufficient amount to satisfy the demand of plaintiff above stated, and safely preserve and hold the same subject to the order of the court; and you will also hereunder summon such persons as garnishees as you may be required in the
400 premises and according to law, and make due returns of your doings hereunder to said district court by the first day of the next regular term thereof.

Witness my hand officially and the seal of said court, hereto affixed this 28th day of April, 1886.

W. J. BIRCHARD,
Clerk of Dist. Court,
[SEAL.] By A. A. BALLUFF, *Deputy.*

On the 22nd day of May, 1886, the plaintiff filed his petition for removal to the circuit court of the United States, eastern division of the southern district of Iowa; which petition is in words and figures following, to wit:

Petition.

Petition for removal on the grounds of citizenship under the act of March 3rd, 1875, where the adversary parties are all citizens of different States and all the plaintiffs and all the defendants unite in the petition for removal.

In the District Court of Scott County, State of Iowa.

SOUTH BRANCH LUMBER CO., a Corporation Organized under the Laws of the State of Illinois, Plaintiff, *vs.* GEORGE OTT, Defendant.	Petition for Removal to the Circuit Court of the United States, Eastern Division of the Southern District of Iowa.

To the honorable the district court of Scott county, State of Iowa:

401 Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that the petitioner was at the time of the commencement of this suit and still is a corporation organized under the laws of

1st.

That he admits that he is indebted to plaintiff as stated and claimed in said petition, &c.

2nd.

And, for a second answer to said petition and by way of cross-petition, defendant alleges that said plaintiff, in order to cause a writ of attachment to issue against him, defendant, in this cause, stated and alleged in its said petition herein that he, defendant, had disposed of his property in whole or in part with intent to de-
405 fraud his creditors, and also that the indebtedness claimed from defendant in said petition was incurred for property obtained under false pretenses; and that also, in order to procure the issuance of a writ of attachment in this cause, said plaintiff made and filed in this cause a certain attachment bond, as is required by law, in writing, signed by plaintiff and by F. H. Griggs, Jens Lorenzen, H. H. Andersen, and W. C. Wadsworth, as sureties, said bond being dated April 28th, 1886, and in the penal sum of one hundred and eleven thousand five hundred and seventy-six dollars, a copy of which bond is hereto attached, marked "Exhibit A," and made a part thereof; and defendant further alleges that plaintiff caused thereby a writ of attachment to issue in this cause against defendant, and the same was by plaintiff placed in the hands of the sheriff of said county and was by said sheriff served by being levied upon the property of defendant, as appears by the return on said writ; and defendant further alleges that at the time said petition and bond in this cause were so made and filed it was not true that he, defendant, had disposed of his property or any part thereof with intent to defraud his creditors, nor was it at said time or at any time true that the indebtedness claimed in said petition in this cause or any part thereof was incurred for property obtained under false pretenses by said defendant.

Defendant says that said allegations so made in said petition to procure the issuance of said writ of attachment were not true
406 in fact, and that said plaintiff at said time had no reasonable grounds to believe them to be true, and that the said plaintiff in making and filing said petition containing said false allegations and in causing said writ of attachment to be issued and served acted maliciously toward defendant and with intention, design, and purpose of injuring this defendant.

And that defendant has been injured and has suffered damage by reason of the wrongful and malicious suing out of said attachment in the sum of forty thousand dollars, which sum is still the property of defendant and is still due and unpaid, for which sum he asks judgment against said plaintiff and against the said sureties on the said attachment bond, and for costs.

BILLS & BLOCK,
Att'ys for Def't.

STATE OF IOWA, }
County of Scott. }

I, George Ott, being duly sworn, say that I am the defendant in the above-named cause; that I have heard the foregoing answer read and know the contents thereof, and that the same is true as I verily believe.

GEORGE OTT.

Subscribed & sworn to by said George Ott before me this 25th day of May, 1886.

CARL F. HASS,
Notary Public.

[SEAL.]

"EXHIBIT A."

Attachment Bond.

Know all men by these presents that we, South Branch Lum-
407 ber Co., a corporation organized under the laws of the State of Illinois, as principal, and F. H. Griggs, Jens Lorenzo, H. H. Andersen, and W. C. Wadsworth, of the county of Scott, State of Iowa, as sureties, are held and firmly bound unto George Ott (of Scott county, Iowa) in the penal sum of one hundred and eleven thousand five hundred and seventy-six dollars; for the payment of which sum, well and truly to be made unto the said George Ott, his heirs, administrators, or assigns, we hereby severally and jointly bind ourselves, our successors, heirs, administrators, and executors, firmly by these presents.

The condition of the above obligation is such that whereas South Branch Lumber Co., as plaintiff, is about to sue out a writ of attachment from the clerk's office of the district court of the State of Iowa in and for Scott county against George Ott, as defendant, claiming the sum of thirty-seven thousand one hundred & ninety-one $\frac{60}{100}$ dollars as money justly owing from said defendants, and asking that a writ of attachment may issue against the property, rights, and credits of said George Ott:

Now, therefore, if the said South Branch Lumber Co. shall well and truly pay unto the said George Ott all the damages which the said George Ott may sustain by reason of the wrongful suing out of said attachment, then this obligation to be void and of no effect; otherwise to remain in full force and virtue.

Witness our hands this twenty-eighth day of April, A. D. 1886, at Davenport, Iowa.

SOUTH BRANCH LUMBER CO. } *Principal.*
FRANCIS BEIDLER, }
408 F. H. GRIGGS, }
JENS LORENZEN, } *Sureties.*
H. H. ANDERSEN, }
W. C. WADSWORTH, }

STATE OF IOWA, } ss:
Scott County, }

We whose names are subscribed, being duly sworn, each for himself says that he is worth the sum of fifty-six thousand dollars beyond the amount of his debts and has property liable to execution in the State of Iowa equal to twenty-eight thousand dollars.

F. H. GRIGGS.
H. H. ANDERSEN.
W. C. WADSWORTH.
JENS LORENZEN.

Sworn to before me by said F. H. Griggs, H. H. Andersen, W. C. Wadsworth, and Jens Lorenzen, and by each of them subscribed in my presence this 28th day of April, 1886.

F. L. DODGE,
[SEAL.] *Notary Public, Scott Co., Iowa.*

(Endorsed:) The within bond filed and the sureties approved by me this 28th day of April, A. D. 1886. W. J. Birchard, clerk., A. A. Balluff, deputy.

On the 31st day of May, 1886, the writ of attachment heretofore issued was returned with a direction to the sheriff of Scott county, Iowa; which direction is in the words and figures following, to wit:

409 To the sheriff of Scott county, Iowa:

You are hereby directed to summon as garnishees under the annexed writ of attachment the following-named persons: Charles F. Meyer, Charles F. Meyer, assignee of George Ott under general assignment for benefit of creditors, and Charles Hill and Addie Kloppenberg. Dated this 28th day of April, 1886.

COOK & DODGE, AND
A. J. HIRSCHL,
Att'ys for South Branch Lumber Co.

Said writ of attachment is endorsed as follows, to wit:

STATE OF IOWA, } ss:
Scott County, }

By virtue of this writ I have, on this 28th day of April, 1886, at 7.55 o'clock p. m., attached the following-described real estate, lying and being situated in the city of Davenport, Scott county, Iowa, to wit: River lot in N. E. ¼ sec. 34, t'p 78, R. 3 E., 5th P. M., described as follows: Commencing on the S. line of the Davenport and Rockingham road 1,453 ft. westwardly from where the line dividing sect's 34 & 35 strikes the south line of Second street, in the city of Davenport, thence south 42 & ½° E. 487 feet to the Mississippi river thence easterly along said river 164 feet *of* Price's southwest corner thence N. 20° W. 418 feet to Rockingham road; thence S. 78° W. 141 ft. 7 inches; thence S. 20° E. 187 ft. 8 in.; thence N. 42½° W

212 ft. 4 in., and thence S. 78° W. 124 ft. to beginning, with buildings thereon used as a sash, door, and blind factory; also the E. 27 & ½ ft. of lot 3, block 6, original town of Davenport, with building used as warehouse, &c.

410 NAT. LEONARD, *Sheff.*

Also as a further return upon this writ, as commanded by pl'ff's att'ys, I did, on this 28th day of April, 1886, at 9 o'clock p. m., garnishee Charles F. Meyer and Charles F. Meyer as assignee of George Ott; and on the 29th day of April, 1886, at 9.15 o'clock a. m., I garnisheed Charles Hill by giving to each of them as garnishees notice, a true copy of which is hereto attached. I also, at 9.45 a. m., April 29th, 1886, garnisheed Addie Kloppenburg, who is a minor, under the age of 14 years, by giving to her also a garnishee notice, and also by giving a garnishee notice to George Ott, her guardian, and also a garnishee notice to her mother, Leonora De Foy, a true copy of which is hereto attached and made a part of this return.

Done in the city of Davenport, Scott county, Iowa.

NAT. LEONARD, *Sheriff*,
By H. L. JONES, *Deputy*.

Levy	$2 10
Gar.	5 20
Total	7 30

STATE OF IOWA, *Scott County*, } *ss:*

As commanded by pl'ff's att'ys, I did, on the 17th day of May, 1886, at 5.45 o'clock p. m., garnishee Charles F. Meyer and Charles F. Meyer as assignee of George Ott, by giving to him a garnishee notice, a true copy of which is hereto attached and made a part of this return.

Done in the city of Davenport, Scott county, Iowa.

NAT. LEONARD, *Sheriff*,
By R. S. QUINN, *Deputy*.

411 STATE OF IOWA, *Scott County:*

In the District Court of said County.

SOUTH BRANCH LUMBER CO., Plaintiff,
vs.
GEORGE OTT, Defendant.

To Charles F. Meyer and Chas. F. Meyer, assignee of Geo. Ott:

You and each of you are notified that on the 28th day of April, A. D. 1886, a writ of attachment was issued out of the above-named court against the above-named defendants for the sum of $37,191.69, with interest.

This, therefore, is to notify and inform you that by virtue of said writ, to me issued, directed, and delivered, and by force of the statute

in such case made and provided, you are attached and held as garnishee, as a debtor, and as a person holding property of said defendant, and that you are required not to pay any debt due by you to said defendant or hereafter to become due, and that you must retain possession of all property, goods, chattels, rights, moneys, credits, or effects of said defendant now or hereafter being in your custody or under your control, in order that the same may be dealt with according to law. You are also required to appear on the first day of the next term of the district court in and for said county, to wit, at the court-house, in the city of Davenport, on the 25th
412 of May, A. D. 1886, and answer such interrogatories as may be then propounded to you, or you may be liable to pay the entire judgment as aforesaid, and the costs of this proceeding.

Given under my hand this 17th day of May, A. D. 1886.

NAT. LEONARD,
Sheriff of Scott County, Iowa,
By R. S. QUINN, *Deputy.*

413 STATE OF IOWA, *Scott County:*

In the District Court of said County.

SOUTH BRANCH LUMBER CO., Plaintiff,
vs.
GEORGE OTT, Defendant.

To Charles F. Meyer and Chas. F. Meyer, assignee of Geo. Ott; Charles Hill, Addie Kloppenberg, and Geo. Ott, guardian, and Mrs. Leonora Defoi, mother of Addie Kloppenburg:

You and each of you are notified that on the 28th day of April, A. D. 1886, a writ of attachment was issued out of the above-named court against the above-named defendants for the sum of $37,191.69, with interest.

This, therefore, is to notify and inform you that by virtue of said writ, to me issued, directed, and delivered, and by force of the statute in such case made and provided, you are attached and held as garnishee, as a debtor, and as a person holding property of said defendant, and that you are required not to pay any debt due by you to said defendant or hereafter to become due, and that you must retain possession of all property, goods, chattels, rights, moneys, credits, or effects of said defendant now or hereafter being in your custody of under your control, in order that the same may be dealt with according to law. You are also required to appear on the first day of the next term of the district court in and for said county, to wit, at the court-house, in the city of Davenport, on the 25th
414 of May, A. D. 1886, and answer such interrogatories as may then be propounded to you, or you may be liable to pay the entire judgment as aforesaid and cost of this proceeding.

Given under my hand this 28th day of April, A. D. 1886.

NAT. LEONARD,
Sheriff of Scott Co., Iowa.

415 And still, on said 31st day of May, 1886, the following order was duly made and entered of record, to wit:

SOUTH BRANCH LUMBER CO.
vs.
GEORGE OTT.

On this 31st day of May, 1886, the plaintiff, appearing by Cook & Dodge and A. J. Hirschl, its attorneys, and the defendant appearing by Bills & Block, his attorneys, thereupon the petition of the plaintiff for a removal of this cause comes on for a hearing, and now, the court having heard and considered said petition and being fully advised in the premises—

It is ordered that this cause be removed and transferred to the circuit court of the United States for the southern district of Iowa, eastern division, and the bond for said transfer is fixed at five hundred dollars, with sureties to be approved by the clerk of this court.

The foregoing transcript duly certified by W. J. Birchard, clerk of said court.

Afterwards, to wit, in the circuit court of the United States, to which the cause had been removed, the following papers were filed, copies of which are attached and read, as follows, to wit:

416 In the Circuit Court of the United States, Southern Dist. of Iowa, Eastern Division, *ss:*

SOUTH BRANCH LUMBER COMPANY
vs.
GEORGE OTT.
Reply to Defendant's Cross-Petition.

The plaintiff, South Branch Lumber Company, and F. H. Griggs, Jens Lorenzen, H. H. Andersen, and W. C. Wadsworth, sureties on attachment bond, reply to the cross-petition of defendant:

I.

They admit that plaintiff's original petition in this action averred grounds for issuing a writ of attachment; that an attachment bond was executed and filed, and that plaintiff caused a writ of attachment to be issued and placed in the hands of the sheriff of Scott county, Iowa, and that the sheriff levied upon certain real estate belonging to defendant and summoned certain parties as garnishees; all of which will more fully appear by reference to the original papers in said action and the return of the sheriff on the writ of attachment, to which reference is made; deny that said allegations so made in plaintiff's petition were not true in fact, and deny that said plaintiff at said time had no reasonable cause to believe them to be true, and deny that said plaintiff, in making and filing said petition containing said allegations and in causing said writ of attachment to be issued and served, acted maliciously towards defendant, and with the intention, design, and purpose of injuring defendant.

417 They further deny that defendant has been injured and has suffered damage by reason of the alleged wrongful and malicious suing out of said attachment in the sum of forty thousand dollars or any other sum.

II.

Further replying, the said plaintiff, South Branch Lumber Co., avers that before the filing its said petition asking for a writ of attachment it did by its officers fully and fairly state to its attorneys, duly admitted to practice and acting as its legal advisers, all the facts and circumstances of its dealings with said defendant and all the facts within the knowledge of its officers touching the alleged causes for attachment set forth in its petition, and was advised by said attorneys that it had good and sufficient grounds for said allegations and for procuring a writ of attachment, for the reasons stated in the petition; and plaintiff avers that it did in good faith act upon said advice, and in pursuance thereof, and without malice and fully believing that it did have good and reasonable cause to believe the allegations of the petition to be true, make and file its said petition and procure the issuing of said writ of attachment.

Plaintiff prays judgment as in its original petition.

(Signed) SOUTH BRANCH LUMBER CO.,
By COOK & DODGE AND A. J. HIRSCHL,
Its Attorneys.

STATE OF ILLINOIS, } ss:
County of Cook, }

418 I, Francis Beidler, being duly sworn, on oath do state that I am the secretary of the plaintiff, South Branch Lumber Co., in the above-entitled action; that I have read the foregoing reply and know its contents, and the statements thereof are true, as I verily believe.

FRANCIS BEIDLER.

Subscribed by the said Francis Beidler in my presence and by him sworn to before me this 22nd day of January, 1887.

[SEAL.] FRANK A. HELMER,
Notary Public, Cook County, Illinois.

Endorsed: Filed Jan. 25, 1887. H. K. Love, clerk.

In the Circuit Court of the United States for the Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY
vs.
GEORGE OTT. } No. 171. Law.

Amendment to Answer.

Now comes the above-named defendant and, by leave of court first had and obtained, amends his answer in the above-entitled cause as follows, to wit:

Said defendant alleges that for many years prior to the 27th day of April, 1886, he was engaged at Davenport, Scott county, Iowa, in the business of buying and selling and manufacturing sash, doors, blinds, &c.

That on or about said 27th day of April, 1886, he became
419 and was unable to meet all his obligations and debts made in said business promptly or in full, and he therefore did, on the 27th day of April, 1886, make, execute, and deliver in writing to Charles F. Meyer, of said place, as assignee, a general assignment of all his property, both real and personal and wherever situated, in trust for the benefit of all his creditors, to be divided among them *pro rata*, under the provisions of chapter seven (7), title fourteen (14), of the Code of Iowa, as by reference to a copy of said assignment, attached hereto and made by reference a part of this his answer, will fully and at large appear; that said written assignment contained an inventory of all the property of defendant and a list of his creditors, with the amount due each, and was duly acknowledged before a notary public, so as to entitle the same to be recorded; and said written assignment having been so made, acknowledged, and delivered to said Charles F. Meyer, assignee, on said 27th day of April, 1886, was on the same day duly filed for record, and was then and there recorded with the recorder of deeds of said Scott county, Iowa, where this defendant had for a long time and then resided.

That on said 27th day of April, 1886, and as soon as said deed of assignment was by this defendant delivered to said Meyer, he, said Meyer, accepted said trust and at once took possession of all the property of every kind of this defendant, except what was and is exempt from the payment of debts by the laws of Iowa, and at once proceeded to carry out and execute said trust as is provided by the statutes of the State of Iowa, and that said Meyer and his suc-
420 cessor as such assignees and trustees ever since that time have had and now has said property in the execution of said trust under the provisions of said chapter 7, title 14, of the Code of Iowa.

That thereafter and on the 14th day of May, 1886, said Meyer, as such assignee, did file with the clerk of the circuit court of the State of Iowa for said Scott county, where said assignment was recorded, a true and full inventory and valuation of all the property of said estate of this defendant, under oath, so far as the same came to his knowledge, and then and there entered into bonds to said clerk, for the use of the creditors of this defendant, in double the amount of the said inventory and valuation of said property, with good and sufficient sureties, approved by said clerk of said court, for the faithful performance of said trust, and that said Meyer, as such assignee, did forthwith and on said 27th day of April, 1886, give notice of said assignment by publishing a notice of the same in a newspaper in said Scott county for six weeks, and did at the same time send a printed copy of said notice by mail to each creditor of this defendant, directed to such creditor at his usual place of residence, according to the provisions and requirements of section 2119 of the Code of Iowa, and that at the expiration of three months from the time of first

publishing such notice said Meyer, as such assignee, did file his report in writing in said circuit court of Iowa, giving a true and full list, under oath, of all such creditors of this defendant as claimed to be such, with a statement of their claims, and also an affi-
421 davit of the publication of said notice of said assignment and a list of said creditors and their places of residence to whom said notices had been sent by mail and the date of mailing, all duly verified, as is required by section 2120 of the Code of Iowa.

That within the said three months from the time of first publishing said notice of assignment creditors of this defendant to the number of seventy-five or more presented their claims under oath, as is provided in said statutes, to said assignee and in said circuit court of Iowa, asking to share in the proceeds of the property so assigned, and said claims amounted in the aggregate to more than the sum of one hundred thousand dollars.

That said Charles F. Meyer, as such assignee, proceeded to execute said trust, as is provided by law and the practice of said circuit court of Iowa, and converted most of the available property of this defendant so assigned to him into money and held the same as such assignee subject to the orders and jurisdiction and judgment of said circuit court down to March 14, 1887, when he, said Charles F. Meyer, died, and on the 18th day of March, 1887, the district court of Iowa in and for said Scott county, Iowa, where said matter of said assignment was then and now is pending, upon application duly made, duly appointed John B. Meyer as such assignee in the place and stead of said Charles F. Meyer, deceased, as is provided by said chapter 7, title 14, of the Code of Iowa, and he, said John B. Meyer, then and there duly qualified, as is provided by said statute, and has ever since acted and now is acting as such assignee in pursuance of said statute.

422 That said matter of said assignment was, when said inventory and valuation were filed in said court, duly docketed in and by said court as case number 5330 on the docket of said court, and the same is now pending in said district court, as is provided by said laws of the State of Iowa.

That under said law said assignee was and is compelled to make a dividend of the money in his hands as such assignee among said creditors at the expiration of six months from the time of the first publication of said notice of said assignment, and that said six months expired on the 27th day of October, 1886.

That on the 4th day of October, 1886, said assignee obtained from said circuit court of Iowa an *ex parte* order excusing him from making any such dividend until all litigation seeking to hold him personally responsible to any creditor of this defendant for or on account of such fund so in his hands as such assignee should be finally disposed of and determined.

That on the 18th day of November, 1886, several of the said creditors of this defendant who have presented their claims within the three months from the giving of said notice of assignment filed in said circuit court of Iowa a petition and motion in writing asking said court to set aside and revoke said order of October 4th, 1886,

and that this assignee be ordered to at once make a *pro rata* dividend of all the funds in his hands as such assignee among the said creditors according to the said laws of the State of Iowa, and that said petition and motion are still pending in said court.

423 And this defendant further avers that in accordance with the provisions of the statutes and laws of the State of Iowa full and complete jurisdiction of and over the matter of said assignment, and of and over the said trust fund so held by said assignee, and of and over the execution of said trusts, and of and over said assignee personally as such assignee and trustee as aforesaid, was and is vested in the said circuit, now district, court of the State of Iowa in and for Scott county, which district court now has cognizance of and exclusive jurisdiction of the same, with ample power, authority, and jurisdiction in said court to control and enforce the execution of said trusts, to decide upon the claims and rights of all parties claiming an interest in or lien upon said trust fund, and right and justice fully to administer in the premises; that under the laws of the State of Iowa said fund so in the possession of said assignee is a fund in said district court of Iowa, and said assignee holds the same as an officer of said district court of Iowa and subject to the orders and supervision of said court the same as if he so held said fund as a receiver of and appointed by said court.

And therefore this defendant avers that this honorable court has no jurisdiction to entertain this action, and especially so far as the garnishment proceedings in this case are concerned, in which it is sought by plaintiff to take the said fund from the possession of said assignee and of said *assignee and of said* State court and to dispose of the same in disregard of the orders and judgment of said

424 court now having the possession of and exclusive jurisdiction over the same.

Defendant therefore asks that this cause may be remanded to the district court of Iowa in and for Scott county, and that this court proceed no further in the same.

BILLS & BLOCK,
Att'ys for Def't.

STATE OF IOWA, } *ss:*
Scott County, }

I, George Ott, being duly sworn, on oath do say that I am the defendant named in the above-entitled cause; that I have heard the above and foregoing amendment to answer read, and I know the contents of same, and its statements are true, as I verily believe.

GEORGE OTT.

Subscribed and sworn to in my presence by said George Ott this 18th day of July, 1887.

[SEAL.]

HERMAN BLOCK,
Notary Public, Scott County, Iowa.

Deed of Assignment.

This indenture, made the 27th day of April, 1886, between George Ott, of Davenport, Iowa, of the first part, and Charles F. Meyer, of the same place, of the second part, witnesseth:

Whereas said George Ott is justly indebted to many persons in sundry amounts and has become unable to pay and discharge with punctuality or in full, and being desirous of making a fair and equitable distribution of his property and effects among his creditors:

Now, therefore, this indenture witnesseth:

425 That the said Geo. Ott, in consideration of the premises and of the sum of one dollar to him in hand paid by the party of the second part, has granted, bargained, sold, released, assigned, conveyed, transferred, and set over, and by these presents does grant, bargain, sell, release, assign, convey, transfer, and set over, unto said Charles F. Meyer all and singular the lands, tenements, and hereditaments, fixtures, machinery, and all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, and property of every nature whatsoever of him, the said George Ott, wherever the same may be situated, except such property as is by law exempt from the payment of his debts; to have and to hold the same and every part and parcel thereof, with the appurtenances, to said party of the second part, in trust, however, and to and for the following uses, intents, and purposes—that is to say: The said party of the second part is to receive said property herein assigned and is to sell and convert the same into money and distribute the same among the creditors of said George Ott under the provisions of chapter seven (7), title fourteen (14), of the Code of Iowa. Said property herein assigned, so far as I can now call the same to mind, is contained in "Schedule A," hereto attached.

And my said creditors and the amount of their respective demands are contained in "Schedule B," hereto attached, so far as I can now call the same to mind.

In witness whereof said George Ott has hereunto set his hand this 27th day of April, 1886.

GEORGE OTT.

426 STATE OF IOWA, } *Scott County,* } ss:

On this 27th day of April, 1886, before me, the undersigned, a notary public in and for said county, personally came George Ott, to me personally known to be the identical person whose name is affixed to the foregoing deed of assignment as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal the date last above written.

JOHN C. BILLS,

[NOTARIAL SEAL.] *Notary Public in and for Scott County, Iowa.*

(Attached to same is Schedule A of assets and Schedule B of liabilities.)

(Endorsed:) Filed Aug. 7, 1887. H. K. Love, clerk.

427 And it appearing that a writ of attachment has been issued in this action and levied upon certain real estate, and that certain parties have been summoned as garnishees, it is ordered that plaintiff may have special execution against the attached real estate situated in the county of Scott and State of Iowa, and particularly described as follows, to wit: River lot in N. E. 4, sec. 34, t'p 78, R. 3 E., 5th P. M., described as follows: Commencing on the S. line of the Davenport and Rockingham road 1,453 ft. westwardly from where the line dividing sect's 34 & 35 strikes the S. line of 2nd street, in the city of Davenport, thence S. 42½° E. 487 feet to the Mississippi river; thence easterly along said river 164 feet to Price's southwest corner; thence N. 20° W. 418 feet to Rockingham road; thence S. 78° W. 141 feet 7 inches; thence S. 20° E. 187 feet 8 inches; thence N. 42½° W. 212 feet 4 inches, and thence S. 78° W. 124 feet to beginning, with buildings thereon used as a sash, door, and blind factory; also the E. 27½ feet of lot 3, block 6, original town of Davenport, with building used as warehouse, &c.

And it is ordered that this action stand continued for such further proceedings as may be proper in relation to the garnishments or other matters involved in the attachment.

(Signed) J. M. LOVE, *Judge.*

428 In the Circuit Court of the United States, Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY *vs.* GEORGE OTT. } No. 171. Law.

Judgment Entry.

Now, on this 17th day of September, 1887, this case came on for trial before the court, a trial by jury being expressly waived by the parties. The plaintiff appeared by Cook & Dodge, F. J. Smith & Hellmer, and A. J. Hirschl, its attorneys, and the defendant appeared by Bills and Block, his attorneys. Thereupon it was agreed in open court by the parties that judgment should be rendered in favor of plaintiff for the full amount claimed in plaintiff's petition.

It is therefore considered by the court that plaintiff have and recover of the defendant Ott the sum of forty thousand two hundred and sixty-one $\frac{34}{100}$ — ($40,261.34), with interest at the rate of eight per cent. per annum on three thousand two hundred and twenty-eight $\frac{35}{100}$ dollars (3,228.35) of said sum, and with interest at the rate of six per cent. per annum on the remainder of said sum, to wit, thirty-seven thousand and thirty-two $\frac{99}{100}$ dollars ($37,032.99), and the costs of the action, taxed at — dollars, and that plaintiff have execution therefor.

429 The following is a copy of a certified copy of the transcript in the proceedings of Charles Hill to foreclose his mortgage, and is in words and figures following, to wit:

CHAS. HILL
vs.
GEORGE OTT; CHAS. F. MEYER, Assignee of Geo. Ott under General Assignment for Benefit of Creditors. } 5366.

Be it remembered that on the 30th day of July, 1886, there was filed in the above-entitled cause, in the circuit court of the State of Iowa in and for Scott county, a petition, which is in words and figures as follows, to wit:

In the Circuit Court of the State of Iowa in and for Scott County. Sept. Term, 1886.

CHAS. HILL, Pl'ff,
vs.
GEO. OTT and CHAS. F. MEYER, Assignee of Geo. Ott under General Assignment for Benefit of Creditors.

I.

The plaintiff, Chas. Hill, respectfully represents that on or about the 20th day of February, 1886, the defendant, Geo. Ott, executed and delivered his promissory note for three thousand ($3,000.00) dollars to the plaintiff, Chas. Hill. The following is a true copy
430 of said note in words and figures following, to wit:

$3,000.00. DAVENPORT, IOWA, *Feb'y 20th*, 1886.

One day after date I promise to pay three thousand ($3,000.00) dollars, with interest thereon until paid, at the rate of seven per cent. per annum, from the time same becomes due; and a failure to pay any of said interest within ten days after due shall cause the whole of this note to thereupon become due and collectible at once. If this note is not paid within 10 days after it becomes due I promise to pay all necessary and legal expenses incurred by the holder of this note on the presentation and protestation of the same, as well as a reasonable attorney's fee for the collection of this note by suit or otherwise.

The drawers and endorsers and makers of this note severally waive presentment for payment, protest, and notice of protest, and non-payment of this note secured by chattel m't'ge.

GEORGE OTT.

(Endorsement:) The within note is intended to stand as security to indemnify Charles Hill on account of endorsement of $3,000.00 in my favor.

II.

That in order to secure the payment of said note the said George Ott did execute and deliver to the plaintiff, Chas. Hill, on or about the said 20th day of Feb'y, 1886, his certain chattel mortgage on all his stock of goods, wares, and merchandise, consisting of a general stock of glass, glass windows, doors, window-frames, blinds, sash, and

whatsoever then kept in said George Ott's brick building No.
431 410 West Front street, and also on the entire stock of lumber and manufacturing material then on hand kept upon the premises of his factory in Davenport, Iowa, as well as on all goods, wares, and merchandise, lumber, and manufacturing materials that might hereafter be purchased by him during the existence of said mortgage to replenish his stock or stocks.

III.

That said mortgage was duly filed for record in the office of the recorder of Scott county, Iowa, on the 26th day of April, 1886, and recorded in Book 2 of Chattels, on page 551.

IV.

That a copy of said mortgage, marked "Exhibit A," is hereto attached and made part hereof.

V.

That after the execution and delivery and the recording of the said mortgage the said George Ott made a general assignment for the benefit of his creditors to the said defendant, Charles F. Meyer.

VI.

That the condition of said mortgage had been broken, in this, that said note had not been paid when due and still remains unpaid.

VII.

That the plaintiff is still the owner of said note and mortgage, and that there is due thereon the sum of $3,000, with 7 — interest from the 21st day of Feb'y, 1886.

432 VIII.

Therefore the plaintiff claims the right to foreclose said mortgage in this court, and asks that the said assignee, Charles F. Meyer, may be ordered to pay the said mortgage out of the assets of the said George Ott in his hands; that if he fails so to do a special execution may issue against the mortgaged property, and that the same, or so much thereof as may be necessary to satisfy said note and mortgage, *to* be sol l, and that he may have such further and general relief, not inconsistent with equity, as this cause may require.

CHAS. HILL.

STATE OF IOWA, }
Scott County, } *ss*:

I, Charles Hill, being duly sworn, do say upon oath that I am the plaintiff in the above-entitled cause; that I know the contents of the foregoing petition, and that the statements thereof are true as I verily believe.

CHAS. HILL.

Sworn to and subscribed before — by the said Chas. Hill this 20th day of July, A. D. 1886.

[SEAL.] ERNST CLAUSSEN,
Notary Public, Scott Co., Iowa.

EXHIBIT "A."

Chattel Mortgage.

Know all men by these presents that I, George Ott, of the city of Davenport, of the county of Scott and State of Iowa, in consideration of the sum of one ($1.00) dollar to me in hand paid by Charles Hill, of the same county and
433 State, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said party of the second part, his heirs, assigns, etc., the following goods and chattels, to wit: All my stock of goods, wares, and merchandise, consisting of a general stock of glass, windows, doors, window frames, blinds, sash, and whatsoever now kept in my brick building, No. 410 West Front street, and the entire stock of lumber and manufacturing materials now on hand and kept upon the premises of my factory in Davenport, Iowa, as well as all goods, wares, and merchandise, lumber, and manufacturing material that may hereafter be purchased by me during the existence of this mortgage to replenish the stock or stocks, reserving to myself the right to sell and manufacture, respectively, said stocks in the ordinary course of my business:

To have and to hold the same forever; and I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever—

Upon condition, however, that if the said party of the first part shall pay to the said party of the second part, his heirs, assigns, etc., his one promissory note, dated Feb'y 20, 1886, and described as follows, to wit:

One for three thousand ($3,000) dollars, payable one day after date; one for —— dollars, payable —— after date; one for —— dollars, payable —— after date, and one for —— dollars, payable —— after date, with interest at the rate of seven per cent. per
434 annum, according to the tenor thereof, then these presents to be void; otherwise in full force.

And I, the said party of the first part, do hereby covenant and agree to and with the said party of the second part that in case of default made in the payment of the above-mentioned promissory note or in case of my attempting to dispose of or remove from said county of Scott the aforesaid goods and chattels or any part thereof, or whenever the said mortgagee shall choose so to do, then and in that case it shall be lawful for the mortgagee or his assigns, by himself or agent, to take immediate possession of said goods and chattels wherever found, the possession of these presents being his sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due or to become

due, as the case may be, with all reasonable costs pertaining to the taking, keeping, advertising, and selling of said property; the money remaining after paying said sums, if any, to be paid on demand to the said party of the first part; said sale to take place, wherever the holder of this mortgage may select, in the county of Scott, State of Iowa, after giving at least ten days' notice thereof by posting up written notices in three public places in said county; and I hereby further authorize the person conducting said sale to adjourn the same, if deemed in his opinion necessary, from time to time until said property be sold, and to give a bill of sale to the purchaser thereof, which shall be conclusive as to the regularity of all the proceedings connected therewith and convey
435 absolutely all of my right and title therein.

If from any cause said property shall fail to satisfy said debt, interest, cost, and charges I covenant and agree to pay the deficiency.

Witness my hand this 20th day of February, 1886.

GEORGE OTT.

STATE OF IOWA, } *ss:*
Scott County, }

Be it remembered that on the 20th day of February, 1886, before the undersigned, a notary public in and for said county, came George Ott, to me personally known to be the identical person whose name is affixed to the foregoing instrument as grantor, and acknowledged the same to be his voluntary act and deed.

Witnesss my hand and notarial seal the day and year last above written.

BLEIK PETERS,

[SEAL.] *Notary Public in and for Scott County, Iowa.*

(Endorsed:) Chattel mortgage. George Ott to Chas. Hill. Dated Feb'y 20th, 1886. State of Iowa, Scott county, *ss:* Filed for record this 26th day of April, A. D. 1886, at 5.07 o'clock p. m., and recorded in Book 2 of Chattels, on page 551. H. Vollmer, recorder. W. Puls, deputy.

Thereafter, on July 28th, 1886, there was an original notice filed, which is in words and figures following, to wit:

436 In the Circuit Court of the State of Iowa in and for Scott County. Sep. Term, A. D. 1886.

CHARLES HILL, Plaintiff,
vs.
GEORGE OTT & CHARLES HILL, Assignee of George Ott under General Assignment for Benefit of Creditors, Defendants.

To the aforesaid defendants:

You are hereby notified that on or before the 22nd day of July, A. D. 1886, a petition of Charles Hill, plaintiff, will be filed in the

office of the clerk of the circuit court of the State of Iowa in and for Scott county, claiming of you, for conditions broken, the foreclosure of a certain chattel mortgage, dated Feb'y 20th, 1886, and recorded in the office of the recorder of Scott county, Iowa, in Book 2 of Chattels, page 551, made by said George Ott to the plaintiff, there being due on said mortgage the sum of $3,000, with 7 — per annum interest from Feb'y 21st, 1886; also claiming that the said assignee may be ordered to pay said sum from the assets in his hands, on which mortgage is a lien, and that unless you appear thereto and defend before noon of the second day of next September term, A. D. 1886, of said court, which will commence at Davenport, in said county, on the 13th day of September, A. D. 1886, default
437 will be entered against you and a decree rendered thereon as prayed for.

CHARLES HILL, *Plaintiff*,
By ERNST CLAUSSEN,
His Attorney.

STATE OF IOWA, }
Scott County, } *ss:*

I, Nat. Leonard, sheriff of the said county, certify that the within notice came into my hands for service on Tuesday, the 20th day of July, 1886, at — o'clock — m., and that on the 22nd day of July, 1886, I served the same upon the said Charles F. Meyer, and on the 26th day of July, 1886, I served the same upon George Ott, the within-named defendant, at the township of city of Davenport, in the said county, by reading the same to each of them and by giving to each of them a copy thereof.

NAT. LEONARD, *Sheriff*,
By H. L. JONES, *Deputy*.

Fees, service	$0 75
" copy	60
" mileage	10
Total	$1 45

Thereafter, on the 14th day of September, 1886, there was filed an answer, which is in words and figures following, to wit:

In the Circuit Court of the State of Iowa in and for Scott County.

CHAS. HILL
vs.
GEORGE OTT & CHS. F. MEYER, Assignee, &c. } Equity. No. 5366.

438 Now comes Chas. F. Meyer, assignee of George Ott for benefit of his creditors, and for answer to the petition of plaintiff in the above-entitled cause says that the personal property described in the said chattel mortgage attached to said petition came into his hands as assignee of said George Ott on or about the 27th day of April, 1886, and that soon thereafter and before the bringing

of this suit this defendant was garnisheed in several actions brought by creditors of said George Ott against him by attachment, and said actions are still pending in the court of the State of Iowa and of the United States in and for the southern district of Iowa, and, as this defendant is informed and verily believes, said several creditors, the plaintiffs in said attachment suits, contest the validity of the said mortgage of said plaintiff as against them and seek to charge this defendant as garnishee for and on account of said property so described in plaintiff's said mortgage and so received by this defendant as such assignee.

Defendant therefore says that plaintiff ought not to have a decree or judgment in this suit against him so long as said attachment and garnishment proceedings are pending, as above stated.

BILLS & BLOCK,
Att'y for Meyer, Assignee.

STATE OF IOWA, } ss:
Scott County, }

I, Charles F. Meyer, being duly sworn, say that I am the defendant named in the foregoing answer; that I have heard said
439 answer read and know the contents thereof, and that the same is true as I verily believe.

CHARLES F. MEYER.

Subscribed and sworn by said Charles F. Meyer before me this 14th day of September, 1886.

KARL F. HASS,
[SEAL.] *Notary Public.*

Thereafter, on the 14th day of Nov., 1886, there was filed an amendment to the answer, which is in the words and figures following, to wit:

Amendment to Answer.

In the Circuit Court of the State of Iowa in and for Scott County.

CHARLES HILL
vs. } No. 5366.
GEORGE OTT & CHAS. F. MEYER, Assignee of Geo. Ott.

Now comes Chas. F. Meyer, assignee of George Ott; the Meadville Glass Co., and Hirsch, Ely & Co., creditors of said Ott, and, by leave of court first had, amends his answer in the above cause as follows:

Said defendant alleges that the said mortgage set up in the petition in this cause was made and executed by said Ott to said plaintiff for the purpose and with the intent to delay, hinder, and defraud the creditors of said Ott, and was received by said plaintiff for like purpose and with like intent, and that said mortgage is therefore void and of no effect as against the creditors of said Ott who had
440 presented their claims under said assignment, and said mortgage was not recorded as is provided by law, and said mortgagor was allowed by the terms of said mortgage to sell and dispose

of said mortgaged property the same as if no such mortgage had been made, and to use and dispose of the proceeds of such sales.

BILLS & BLOCK,
Att'ys for said Assignee.
FRED. HEINZ,
Att'y for said Creditors.

STATE OF IOWA, } ss:
Scott County, }

I, W. J. Birchard, clerk of the district court of the State of Iowa in and for said county, do hereby certify that the above and foregoing is a true and perfect transcript of all the pleadings and process filed in the above-entitled cause as fully as the same remains on file in my office.

And I further certify that said district court now has and exercises full authority and jurisdiction over the records and proceedings of said circuit court for the purpose of the authentication and enforcement of all judgments, decrees, orders, and proceedings thereof; that said records are now in my custody and under my control, and that I am the proper officer to make such certificate.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at the court in Davenport, in the said county, this 17th day of June, A. D. 1887.

W. J. BIRCHARD,
Clerk District Court.

441 The following is a copy of the certified copy of the transcript of proceedings by guardian of Addie Kloppenburg to foreclose m'tg'e, and is in the words and figures following, to wit:

ADDIE KLOPPENBURG
vs. } 5348.
CHARLES F. MEYER, Assignee.

Be it remembered that on the 22nd day of June, 1886, there was filed in the circuit court of the State of Iowa, in the above-entitled cause, a petition which is in words and figures following, to wit:

In the Circuit Court of the State of Iowa in and for Scott County.

ADDIE KLOPPENBURG, Plaintiff,
vs. } September Term, 1886.
CHARLES F. MEYER, Assignee, Defendant. } Petition in Equity.

The plaintiff, by Charles Beiderbecke, her guardian, states:

1st. That she, the said Addie Kloppenburg, is a minor, and that Charles Beiderbecke was appointed by this court her guardian of her property on the 22nd day of May, A. D. 1886.

2nd. That on the 22nd day of June, A. D. 1886, the said guardian filed his inventory of the estate of said minor.

442 III. That among the assets of said estate is the following note, to wit:

$3,500.00. DAVENPORT, IOWA, *Feb'y 20th*, 1886.

One day after date I promise to pay Addie Kloppenburg or order thirty-five hundred (3,500) dollars, with interest thereon until paid at the rate of seven per cent. per annum after March the 1st, 1885, payable annually, for value received, principal and interest payable at my place of business, at Davenport Iowa. Should any of said interest not be paid when due it shall bear interest at the rate of 7 — per annum from the time same becomes due; and a failure to pay any of said interest within 10 days after due shall cause the whole of this note to thereupon become due and collectible at once. If this note is not paid within 10 days after it becomes due I promise to pay all necessary and legal expenses incurred by the holder of this note, in the presentation and protestation of the same, as well as a reasonable attorney's fee, for the collection of this note, by suit or otherwise.

The drawers and endorsers and makers of this note severally waive presentment for payment, protest, and notice of protest, and non-payment of this note, secured by chattel mortgage.

P. O. address, ——. No. one.

GEORGE OTT.

And to secure the payment of said note the said George Ott made and delivered to plaintiff a chattel mortgage, a copy of which is hereto annexed, marked Exhibit "A," and made part of this petition.

443 IV. That said chattel mortgage was duly filed for record in the office of the recorder of deeds for Scott Co., Iowa, on the 26th day of April, A. D. 1886, at 5 o'clock p. m., and duly recorded in Book 2 of Chattels, page 550.

V. That on said note and mortgage there is now due and unpaid the sum of three thousand six hundred and sixty-four ($3,664.13) dollars, with seven (7) per cent. p. a. interest from March 1st, 1886.

VI. That the indebtedness evidenced by the note and mortgage aforespecified contained the several sums of money collected by said George Ott as guardian of said minor, Addie Kloppenburg, for her use and benefit, but which said George Ott used, invested in his own business, and had mixed with his own funds, as appears from the several reports filed by George Ott as guardian of the said minor, Addie Kloppenburg, now filed in the office of the clerk of this court, which are hereby specially referred to.

VII. That the said George Ott, on the 27th day of April, 1886, made a general assignment of all his property for the benefit of all his creditors to the said defendant, Charles F. Meyer, assignee, and that the funds and moneys collected by said George Ott as guardian for said Addie Kloppenburg are now in the hands of said assignee, Charles F. Meyer.

VIII. That this plaintiff has demanded the payment of this fund of $3,664.18, with 7 — interest from March 1st, 1886, from said assignee, Charles F. Meyer, but that he has refused to pay or deliver the same.

444 Your petitioner, therefore, asks that this court grant an order requiring the assignee, Charles F. Meyer, to pay the amount of $3,664.18, with 7 — interest from March 1st, 1886, and costs and reasonable attorneys' fees out of the funds now in his hands before any other creditors are paid out of said funds and in preference to them, and for such other and different relief as may be consistent with equity.

ADDIE KLOPPENBURG,
By CHARLES BEIDERBECKE, *Guardian*,
By BLEIK PETERS, *Att'y*.

STATE OF IOWA, } ss:
Scott County, }

I, Charles Beiderbecke, say, on oath, that I am the guardian of Addie Kloppenburg, the plaintiff herein named; that I have read the foregoing petition and know contents thereof, and that the matters and facts therein stated are true as I verily believe.

CHARLES BEIDERBECKE.

Subscribed in my presence and sworn to before me by Charles Beiderbecke this 22nd day of June, 1886.

[SEAL.] BLEIK PETERS,
Notary Public, Scott Co., Ia.

"EXHIBIT A."

Chattel Mortgage.

Know all men by these presents that I, George Ott, of the city of Davenport, of the county of Scott and State of Iowa, in consideration of the sum of three thousand and five hundred (3,500) dollars, to me in hand paid by Addie Kloppenburg, of same place, party
445 of the second part, the receipt whereof is hereby acknowledged, has bargained and sold, and by these presents do grant and convey unto the said party of the second part, his heirs, assigns, etc., the following goods and chattels, to wit: All my stock of goods, wares, and merchandise, consisting of a general stock of glass, glass windows, doors, window frames, blinds, sashes, and whatsoever now kept in my brick building, No. 410 West Front street, and the entire stock of lumber and manufacturing material now on hand and kept upon the premises of my factory in Davenport, Scott Co., Iowa, as well as all goods, wares, and merchandise, lumber and manufacturing material that may hereafter be purchased by me during the existence of this mortgage to replenish the stock or stocks, reserving to myself the right to sell and manufacture respectively said stocks in the ordinary course of my business, to have and to hold the same forever. And I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever, upon condition, however, that if the said George Ott shall pay to the said Addie Kloppenburg, *his* heirs, assigns, etc., his one promissory note, dated Februray 20th, 1886, and described as follows, to wit:

One for thirty-five hundred (3,500) dollars, payable one day after date, with interest at the rate of seven per cent. per annum, according to the tenor thereof, then these presents to be void, otherwise to be in full force; and I, the said George Ott, do hereby covenant and agree to and with the said Addie Ploppenburg that in case
446 of default made in the payment of the above-mentioned promissory note, or in case of my attempting to dispose of or remove from said county of Scott the aforesaid goods and chattels or any part thereof, or wherever the said mortgagee shall choose so to do, then and in that case it shall be lawful for the said mortgagee or his assigns by himself or agent to take immediate possession of said goods and chattels, wherever found, the possession of these presents being his sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due or to become due, as the case may be, with all reasonable costs pertaining to the taking, keeping, advertising, and selling of said property. The money remaining after paying said sums, if any, to be paid on demand to the said party of the first part, said sale to take place where elected by mortgagee, in the county of Scott, State of Iowa, after giving at least ten days' notice thereof by posting up written notices in three public places in said county. And I hereby further authorize the person conducting such sale to adjourn the same, if deemed in his opinion necessary, from time to time until said property be sold, and to give a bill of sale to the purchaser thereof which will be conclusive as to the regularity of all proceedings connected herewith and convey absolutely all of my right and title therein. If from any cause said property shall fail to satisfy said debt, interest, costs, and charges, I covenant and agree to pay the deficiency.

447 Witness my hand and seal this 20th day of February, 1886.

GEORGE OTT.

STATE OF IOWA, } *ss:*
Scott County, }

Be it remembered that on the 20th day of February, 1886, before the undersigned, Bleik Peters, a notary public in and for Scott county, personally came George Ott, to me known to be the identical person whose name is affixed to the foregoing instrument as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

[NOTARIAL SEAL.]

BLEIK PETERS,
Notary Public, Scott Co., Iowa.

And still, on said 22nd day of June, 1886, there was filed the affidavit of attorney, which is in words and figures following, to wit:

Circuit Court.

THE STATE OF IOWA, *Scott County:*

ADDIE KLOPPENBURG
vs.
CHARLES F. MEYER, Assignee.

I, Bleik Peters, on affirmation, deposes and says that he is a regular practicing attorney for the plaintiff, Addie Kloppenburg, plaintiff herein; that there is no agreement, expressed or implied,
448 between him and his client or between him or any other person, except a practicing attorney engaged with him as attorneys in the cause for any division or sharing of the fees to be taxed herein.

BLEIK PETERS.

Subscribed in my presence and affirmed to before me by Bleik Peters this 22nd day of June, 1886.

[SEAL.] W. J. BIRCHARD,
Clerk Circ. C't,
By A. A. BALLUFF, *Deputy.*

And still on said 22nd day of June, 1886, there was filed an original notice in words and figures following, to wit:

In the Circuit Court of the State of Iowa in and for Scott County.
September Term, A. D. 1886.

ADDIE KLOPPENBURG
vs.
CHARLES F. MEYER, Assignee.

To Charles F. Meyer, defendant:

You are hereby notified that a petition of Addie Kloppenburg has now been filed in the office of the clerk of the circuit court of the State of Iowa, in and for Scott county, claiming of you the payment of the sum —three thousand six hundred and sixty-four (3,664.18) dollars, with 7 per c. interest from March 1st, 1886, with costs and reasonable attorney's fee, out of the funds held by you as assignee of George Ott, in preference to any other creditors of said George Ott, and for the particulars you are hereby referred to said petition on file, and
that unless you appear thereto and defend, before noon
449 of the second day of the September term, A. D. 1886, of said court, which will commence at Davenport, in said county, on the 13th day of September, A. D. 18—, default will be entered against you and judgment rendered therein.

ADDIE KLOPPENBURG, *Plaintiff,*
By BLEIK PETERS, *Her Attorney.*

STATE OF IOWA, } ss:
Scott County, }

I, Nat. Leonard, sheriff of the said county, do hereby certify that

the within notice came into my hands for service on Tuesday, the 22nd day of June, 1886, at — o'clock – m., and that on the 22nd day of June, 1886, I served the same upon Charles F. Meyer, assignee, the within named defendant, at the township of Davenport, in the said county, by reading the same to him and by giving to him a true copy thereof.

NAT. LEONARD, *Sheriff*,
By H. L. JONES, *Deputy*.

Fees, service	$.50
" copy	.30
Mileage	.10
	.90

Thereafter, on the 14th day of September, 1886, there was filed an answer, which is in words and figures following, to wit:

In the Circuit Court of the State of Iowa in and for Scott County.

ADDIE KLOPPENBURG
vs.
CHARLES F. MEYER, Assignee. } In Equity, No. 5348. Answer.

450 Now comes Charles F. Meyer, assignee of George Ott for benefit of his creditors, and for answer to petition of plaintiff in the above-entitled cause says that the personal property described in the said chattel mortgage attached to said petition came into his hands, as assignee of said George Ott, on or about the 27th day of April, 1886, and that soon thereafter and before the bringing of this suit this defendant was garnisheed in several actions brought by creditors of said George Ott against him by attachment, and said actions are still pending in the courts of the State of Iowa and of the United States in and for the southern district of Iowa, and as the defendant is informed and verily believes said several creditors, the plaintiffs in said attachment suits, contest the validity of said mortgage of said plaintiff as against them, and seek to charge this defendant as garnishee for and on account of said property so described in plaintiff's said mortgage and so received by this defendant as such assignee.

Defendant therefore says that plaintiff ought not to have a decree or judgment in this suit against him so long as said attachment and garnishment proceedings are pending as above stated.

BILLS & BLOCK, *Att'y for Def't.*

STATE OF IOWA, } *ss:*
Scott County, }

I, Charles F. Meyer, being duly sworn, say that I am the defendant named in the foregoing answer; that I have heard said answer read and know the contents thereof, and that the same
451 are true as I verily believe.

CHARLES F. MEYER.

Subscribed and sworn to by said Charles F. Meyer before me this 14th day of Sept., 1886.

[SEAL.] KARL F. HASS,
Notary Public.

Thereafter, on the 18th day of Nov., 1886, there was filed an amendment to the answer, which is in words and figures following, to wit:

In the Circuit Court of the State of Iowa, in and for Scott County.

ADDIE KLOPPENBURG
vs.
CHARLES F. MEYER, Assignee of George Ott. } No. 5348. Amendment to Answer.

Now comes Charles F. Meyer, assignee of George Ott; the Meadville Glass Co., Limited, and Hirsch, Ely — Co., creditors of said Ott, and, by leave of court first had, amends his answer in the above cause as follows: Said defendant alleges that the said mortgage set up in the petition in this cause was made and executed by said Ott to said plaintiff for the purpose and with the intent to delay, hinder, and defraud the creditors of the said Ott and was received by the parties acting for said plaintiff for like purpose and with like intent, and that said mortgage is therefore void and of no effect as against the creditors of said Ott who have filed and pre-
452 sented their claims under said assignment, and said mortgage was not recorded as is provided by law, and said mortgagor was allowed by the terms of said mortgagee to sell and dispose of said mortgaged property the same as if no such mortgage had been made and to use and dispose of the proceeds of such sale.

BILLS & BLOCK,
Attorneys for Assignee.
FRED. HEINZ,
Att'y for said Creditors.

STATE OF IOWA, } ss:
Scott County, }

I, W. J. Birchard, clerk of the district court of the State of Iowa in and for said county, do hereby certify that the above and foregoing is a true and perfect transcript of all the pleadings and process filed in the above-entitled cause as full as the same remains on file in my office; and I further certify that said district court now has and exercises full authority and jurisdiction over the records and proceedings of said circuit court for the purpose of the authentication and enforcement of all judgments, decrees, orders, and proceedings thereof; that said records are now in my custody and under my control, and that I am the proper officer to make this certificate.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the court-house, in Davenport, in said county, this 17th day of June, A. D. 1887.

[SEAL.] W. J. BIRCHARD,
Clerk Dist. Court.

453 This indenture, made the 27th day of April, 1886, between George Ott, of Davenport, Iowa, of the first part, and Charles F. Meyer, of the same place, of the second part, witnesseth:

Whereas said George Ott is justly indebted to many persons in sundry amounts and has become unable to pay and discharge with punctuality or in full, and being desirous of making a fair and equitable distribution of his property and effects among his creditors:

Now, therefore, this indenture witnesseth that the said George Ott, in consideration of the premises and of the sum of one dollar to him in hand paid by the party of the second part, has granted, bargained, sold, released, assigned, conveyed, transferred, and set over, and by these presents does grant, bargain, sell, release, assign, convey, transfer, and set over, unto said Charles F. Meyer all and singular the lands, tenements, and hereditaments, fixtures, machinery, and all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, and property of every name and nature whatsoever of him, the said George Ott, wherever the same may be situated, except such property as is by law exempt from the payment of his debts; to have and to hold the same and every part and parcel thereof, with the appurtenances, to the said party of the second part, in trust, however, and to and for the following uses, intents, and purposes—

454 that is to say: The said party of the second part is to receive said property herein assigned, and is to sell and convert the same into money and distribute the same among the creditors of said George Ott under the provisions of chapter seven (7), title fourteen (14), of the Code of Iowa.

Said property herein assigned, so far as I can now call the same to mind, is contained in "Schedule A," hereto attached.

And my said creditors and the amounts of their respective demands are contained in "Schedule B," hereto attached, so far as I can now call the same to mind.

In witness whereof said George Ott has hereunto set his hand this 27th day of April, 1886.

GEORGE OTT.

STATE OF IOWA, } *ss:*
Scott County, }

On this 27th day of April, 1886, before me, the undersigned, a notary public in and for said county, personally came George Ott, to me personally known to be the identical person whose name is affixed to the foregoing deed of assignment as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal the date last above written.

JOHN C. BILLS,

[SEAL.] *Notary Public in and for Scott Co., Iowa.*

455 SCHEDULE "A."

Assets.

Real estate.

River lot in N. E.—, sec. 34, t'w'p 78, R. 3 east of the 5th P. M., described as follows: Commencing on the S. line of the Davenport and Rockingham road 1,453 ft. westwardly from where the line dividing sect's 34 and 35 strikes the south line of 2nd Str., in the city of Davenport, thence S. 42 E. 487 ft. to the Miss. river; thence easterly along said river 164 ft.; thence N. 20 W. 418 ft. to Rockingham road; thence S. 78 W. 141 ft. 7 in.; thence south 20 E. 187 ft. 8 inches; thence N. 42 W. 212 ft. 4 inches, and thence S. 78 W. 124 ft. to beginning, with buildings thereon used as a sash, door, and blind factory	$69,146 0–
East 27 feet, lot 3, block 6, of original town of Davenport, with b'ld'g used as warehouse, &c.	16,000 0–

Personal property.

Merchandise and book acc'ts	54,000 00
Lumber, etc.	42,500 00
Teams and fixtures	2,740 00
Total	$184,386 00

456 SCHEDULE "B."

Bills Payable—Liabilities.

South Branch Lumber Co., Chicago, Ill.	33,229 02
S. B. Barker & Co., " "	6,425 00
First Nat. Bank, city	3,000 00
Snider, Miles & Paxton, "	1,377 00
M't'ge on warehouse	3,500 00
" " factory, Mrs. J. Schricker	10,000
Schricker & Mueller	5,486 64
Mrs. J. Schricker	750
Rowley & Harmence, Williamsport, Pa.	812 50
Davenport Steam Heating Co., city	70 12
Witherald & Wells, Massillon, O.	375
Conastota Glass Co., Conastota, N. Y.	1,040 15
Carey, Ogden & Barker, Chicago, Ill.	346 25
Chas. Vogel & Co., St. Louis	119 81
Eli & Harmon, city	83 87
Enterprise Window Glass Co., Bellaire, O.	968 76
Gettsinger & Son, Bridgeton, N. Y.	1,775 53
Geo. Warnhoff & Co., Pittsburgh, Pa.	3,047 16
Cowler Lumber Co., Oshkosh, Wis.	4,306 92
Monroe & Co., Dunbarton, N. Y.	1,696 80

Washington Glass Co., Ithaca, N. Y.	3,827	08
W. H. Wright Lumber Co., Merrill, Wis.	4,422	51
Bellaire Window Glass Co., Bellaire, O.	350	
Geo. F. Kimball, Chicago	307	60
J. H. Rice, "	557	35
Radford Bros. & Co., Oshkosh, Wis.	879	46
457 Jos. P. Gould, Oshkosh, Wis.	2,648	28
Williamson & Levy L'b'r Co., Oshkosh, Wis.	1,009	50
C. Getman, Cleveland, N. Y.	2,122	85
T. H. Sheppard & Co., Chicago, Ill.	1,587	92
Westville Lumber Co., Eau Claire, Wis.	240	70
Crystal Window Glass Co., Bellaire, O.	3,164	96
Rush Owen L'b'r Co., Eau Claire, Wis.	638	16
Chicago Lumber Co., Chicago, Ill.	2,493	63
Quaker City Window Glass Co., Quaker City, O.	615	
Conway M'f'g Co., Milwaukee, Wis.	2,582	29
Sprague, Smith & Co., Chicago, Ill.	433	86
J. M. Albertson & Sons, Morristown, Pa.	1,710	82
Thompson, Walkup Co., Chicago	654	09
A. R. Gray & Co., Chicago	1,389	39
Perely, Lowe & Co., Chicago	528	
Paine Lumber Co., Oshkosh, Wis.	2,327	70
M. B. Adwater & Co., Warsaw, Wis.	1,150	
D. O. Cunningham, Pittsburgh, Pa.	2,573	43
Clark, Hurd & Co., Birchard Bay, N. Y.	1,813	67
Meadville Glass Co., Meadville, V.	2,127	84
Knox & Foltz, lime, New Castle, Pa.	1,638	36
	$122,204	98

Accounts Payable.

Chr. Mueller, city	236	59
T. W. McClelland & Co., city	164	88
Excelsior Varnish Co., New York	25	08
J. A. Fay & Co., Chicago	181	04
Van Horn, Griffin & Co., New York	72	50
458 Sickles, Preston & Co., city	77	53
Austin & Eddy, Boston	153	26
Carey, Ogden & Barker, Chicago	5	06
Coulee Lumber Co., Oshkosh, Wis.	871	91
Curtis M'f'g Co., Ch'go	25	20
D. O. Cunningham, Pittsburgh, Pa.	748	19
Jump River L'b'r Co., Prentiss, Wis.	146	20
Chas. H. Moore & Co., Cincinnati, O.	79	86
M. Kunkel, city	56	89
H. W. Wright Lumber Co., Merrill, Wis.	472	70
W. B. Adwater & Co., Warsaw, Wis.	163	29
R. I. Glass Works, Rock Island, Ill.	283	76
South Branch L'b'r Co., Chicago, Ill.	3,955	35
C. Getman, Cleveland, N. Y.	3,450	69
J. S. Keator Lumber Co., Moline, Ill.	244	96

P. C. Hanford Oil Co., Chi'go		84 28
Chicago L'b'r Co., Chicago		2,997 27
Heath & Milligan M'f'g Co., Chicago		128 28
Eckstein White Lead Co., Cincinnati, O.		1,885 02
Wahl Bros., Chicago		37 37
M. T. Close & Co., Iowa City, Iowa		46 52
Streator Glass Co., Streator, Ill.		278 73
A. A. Simonds, Dayton, O.		26 18
H. Disstons & Sons, Chicago		72
Hirsch, Ely & Co.		984 38
Western Sand Blast Co., Chicago		6 88
Grunlee Bros. & Co., Chicago		4 65
Paine Lumber Co., Oshkosh, Wis.		2,221 03
459 Jas. P. Gould, Oshkosh, Wis.		1,075 67
Rush Owen Lumber Co., Eau Claire, Wis.		385 25
R. I. Lumber M'f'g Co., Rock Island, Ill.		1,649 51
Perly, Lowe & Co., Chicago		434
A. R. Gray & Co., Chicago		2,008 92
C. C. Thompson & Walkup Co., Chicago		3,856 34
C. F. Wells & Co., Pittsburgh, Pa.		670 83
J. E. Patten & Co., Milwaukee, Wis.		90 66
G. F. Kimball		2 98
Etta Ott (Kloppenburg)		3,567 12
Paine Lumber Co., Oshkosh, Wis.		605 07
		33,451 60
C., M. & St. P. R'y Co., fr't, about		1,000 00
Bills payable forward		122,204 98
Total		$156,656 58

460 STATE OF IOWA, } *ss:*
Scott County, }

I, the undersigned, recorder in and for Scott county, Iowa, do hereby certify that the foregoing deed of assignment from George Ott to Charles F. Meyer, filed for record the 27th day of April, A. D. 1886, at 8.57 o'clock a. m., and recorded in Book 3 of Chattel Mortgages, on page 147, is a true and correct copy as shown by the records of said Scott county, Iowa.

Dated Davenport, Iowa, June 13th, A. D. 1887.

FRITZ SUSEEMIEHL,
Recorder Scott County, Iowa.

461 In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division, *ss:*

THE SOUTH BRANCH LUMBER CO.
vs.
GEORGE OTT *et al.*
} In Equity. No. —.

Stipulation to Use Answers of Charles Hill, as Garnishee, as a Deposition in this Cause.

Whereas in a certain action at law pending in this court, wherein South Branch Lumber Co. is plaintiff and George Ott is defendant, numbered 171, the plaintiff caused to be taken the answers of Charles Hill, as garnishee, before L. P. Dosh, as commissioner, on the 23rd day of June, 1886, which answers, with the exhibits thereto, are attached hereto:

Now, it is agreed that upon the trial of this cause the said answers and exhibits may be read in evidence as a deposition in behalf of the complainant the same as if the said answers had been regularly taken by deposition in this cause, subject to all objections for substantial cause. It is further stipulated that the note for $900, executed by George Ott to the First National Bank of Davenport, Iowa, and endorsed by Charles Hill, made in the month of April, 1886, maturing July 9th, 1886, has been paid in full by said Charles Hill since the making of his answers as garnishee.

462 It is further stipulated that if either party desires to take any additional depositions of said Charles Hill in this case it may be done.

Dated this 19th day of April, 1887.

SOUTH BRANCH LUMBER CO.,
By COOK & DODGE, F. J. SMITH & HELMER, AND
A. J. HIRSCHL, *Sol'rs.*
BILLS & BLOCK, *Def'ts' Solicitors.*
BLEIK PETERS, *Att'y for Addie Kloppenburg.*
ERNS. CLAUSSEN, *Solicitor for Charles Hill.*

In the Circuit Court of the United States for the Southern — of Iowa, Eastern Division.

THE SOUTH BRANCH LUMBER COMPANY
vs.
GEORGE OTT.
} No. 171.

Agreement as to Taking Answers of Charles Hill, Garnishee.

The above-entitled case was commenced in the district court of Iowa for Scott county, a writ of attachment was issued by the clerk of said court, and Charles Hill was summonod as garnishee thereunder.

Upon motion of plaintiff said case was transferred to the circuit

court of the United States for the southern district of Iowa, eastern division, and is there pending.

Now, it is agreed that the answers of said Charles Hill, as garnishee, shall be taken before L. P. Dosh, a notary public of Scott county, Iowa, as commissioner, with the same force and effect
463 as if the said L. P. Dosh had been appointed by the said circuit court of the United States as commissioner to take such answers, and it is agreed that the answers of the garnishee shall be so taken on the 23rd day of June, 1886, commencing at the hour of 10 o'clock a. m., before said L. P. Dosh, at the office of Cook & Dodge, Davenport, Iowa.

Dated at Davenport, Iowa, this 23rd day of June, 1886.

THE SOUTH BRANCH LUMBER COMPANY,
By COOK & DODGE & A. J. HIRSCHL, *Att'ys.*
CHAS. HILL.

In the Circuit Court of the United States for the Southern District of Iowa, Eastern Division.

THE SOUTH BRANCH LUMBER COMPANY
vs.
GEORGE OTT. } No. 171.

I, L. P. Dosh, commissioner appointed by virtue of the annexed agreement to take the answers of Charles Hill as garnishee in the above-entitled action, hereby certify that the said Charles Hill appeared before me at 10 o'clock a. m. on June the 23rd, 1886, at the office of Cook & Dodge, in the city of Davenport, Iowa; that Cook & Dodge appeared as attorneys for plaintiff, and Ernst Claussen appeared as attorney for said Charles Hill; that the said Charles Hill was by me duly sworn to make true answers to such questions as might be asked him touching his liability as garnishee in the above-entitled action; that the questions asked and the answers of said
464 Charles Hill, garnishee, thereto were reduced to writing by me in said examination, —, after being read over to said Charles Hill, *was* by him signed.

And I herewith return the said examination to said court, annexed to this certificate.

L. P. DOSH,
[SEAL.] *Notary Public, Scott Co., Iowa, Commissioner.*

CHARLES HILL, of lawful age, being duly sworn, answers the questions to him propounded as follows:

Int. 1. State your name, residence, and occupation.

A. Charles Hill; Davenport, Iowa; and am a furniture dealer.

Int. 2. You are the same Charles Hill who is summoned as garnishee in the case of the South Branch Lumber Company against George Ott, under a writ of attachment issued from the district court of Scott county, Iowa, are you not?

A. Yes, sir.

Int. 3. State whether or not George Ott, before the date of his

general assignment, on or about April 27th, 1886, had made to you a chattel mortgage, and whether or not you have with you the original mortgage.

A. Yes; he made me a mortgage and I have it with me.

Int. 4. Will you please hand said mortgage to the commissioner, to be copied, and have a copy attached to your answers as an exhibit?

A. I will, and request that it be attached as Exhibit A.

Int. 5. I see said mortgage professes to secure a note
465 of $3,000, dated Feb. 20th, 1886. If you have said note in your possession will you hand it to the commissioner and request him to attach a copy of it to your answers?

A. I produce the note, and request that a copy be attached as Exhibit B.

Int. 6. Was George Ott indebted to you on Feb. 20th, 1886; if so, for what consideration and on what account?

A. He was indebted to me; I had endorsed three notes for him at the First National Bank at Davenport.

Int. 7. At the time this mortgage and note were dated you hadn't paid any of the notes at the First National Bank, had you?

A. No, sir.

Int. 8. Then, the fact is that you had endorsed notes of George Ott at the First National Bank of Davenport, Iowa, amounting in all to $3,000, and this mortgage was given to you to secure you for your endorsement of these notes?

A. Yes, sir.

Int. 9. How did this mortgage come to be given; did you ask Ott for it, or did he voluntarily give it to you?

A. I asked him for it; I have been on the notes for a number of years; and didn't like to be without security for it, and he give it to me; he had it made out and handed to me.

Int. 10. How long before his assignment was it that you asked him for it?

A. It was along in the winter; I can't give the date; I asked for it several times.

Int. 11. Did he give it to you the first time you asked him?
466 A. No; we talked about it, and he said he was going to give it to me, and he made it out afterwards.

Int. 12. When did you first know that he had made the mortgage out; how long before his assignment?

A. It was along in the winter after it was made out.

Int. 13. Were you present when the note and mortgage were made out?

A. No, sir.

Int. 14. When were the note and mortgage handed to you first?

A. Along in Feb., 1886; I can't give the exact date.

Int. 15. Were the note and mortgage actually delivered to you and in your possession longer than a week before Ott made his assignment, April the 27th, 1886?

A. Yes, sir.

Int. 16. Who gave them to you?

A. He did himself.

Int. 17. Where?

A. In my store.

Int. 18. How long after they bear date, Feb. 20, '81?

A. I can't say actually how long it was, because, as I said before, it was in Feb. or March somewhere; I can't remember the exact date.

Int. 19. Did you make any entry of it in your books in any way?

A. No, sir.

Int. 20. Did you sign any notes for him after Feb. 20?

A. I believe I did. There is one note yet at the bank.

Int. 21. Did you sign any note for him after the mortgage was given to you?

A. Yes; I believe there was one after the mortgage was given.

Int. 22. For how much?

A. $900; there were 2 for $900 and 1 for $1,200.

Int. 23. What did you do with the note and mortgage?

467 A. They were put in the safe.

Int. 24. The mortgage appears to have been recorded April 26th, 1886, at 5.07 p. m. If the mortgage had been given to you in Feb. or March why did you keep it off from the record so long?

A. He asked me not to record it because it would hurt his credit.

Int. 25. Did he tell you then that whenever it was likely that he would be in trouble or was going to fail he would let you know, so that you could record your mortgage in time?

A. No; but he said he didn't want me to have it recorded.

Int. 26. You agreed that you wouldn't record it at that time?

A. Yes, sir.

Int. 27. How did you come to record it on April 26th?

A. He told me if I wanted to record it I could do so.

Int. 28. Did he tell you then he might not be able to meet his payments?

A. He didn't say anything about it. He said, If you want to record the mortgage you can.

Int. 29. He told you that himself?

A. Yes, sir.

Int. 30. What time of day was that?

A. It might have been a week or it might have been only three or 4 days beforehand. It was some time before I recorded it.

Int. 31. You kept it for several days after he told you you might record it?

A. I kept it for a few days.

Int. 32. Is there any fact or circumstances that you can recollect that will enable you to fix the date when this mortgage was actually delivered to you?

A. No. I know it was some some in the winter.

468 Int. 33. You say after this mortgage was given you endorsed or signed one note for Ott at the First Nat. Bank?

A. I think I did.

Int. 34. About how long after this mortgage dated Feb. 20 was given to you was it before you signed that note at the bank?

A. I can't remember the exact date.

Int. 35. How long after it was actually handed to you was it before you signed a new note at the bank?

A. I can't remember.

Int. 36. Was the note that you signed in the bank after you got the mortgage in renewal of a note that was already there with your name on it?

A. Yes, sir.

Int. 37. Are all these notes that you refer to renewals?

A. Yes, sir.

Int. 38. How long had you been on Ott's paper at the First Nat. Bank for as much as $3,000?

A. Several years. I don't know how many.

Int. 39. About what was the date of the last note that you endorsed for Ott, and what amount?

A. It was made in April, for 90 days, for $900, and matured July 9th, 1886.

Int. 40. Do you know who actually drew this chattel mortgage?

A. I think Bleik Peters.

Int. 41. Did you ever talk to Bleik Peters about it?

A. No, sir.

Int. 42. You didn't get the mortgage from Bleik Peters?

A. No, sir; I got it from Ott himself.

Int. 43. You say you agreed with Ott, when he gave you the
469 mortgage, that you would not have it recorded at that time?

A. Yes, sir.

Int. 44. I understand you further to say that the reason why he requested you not to record it was that if it was recorded it would injure his credit?

A. Yes, sir.

Int. 45. You understand from that that he wouldn't be able if this mortgage was on record to buy his goods as readily on credit as if it was not recorded?

A. That is the way I understood it.

I desire to change my answers to questions number 24 & 44 by saying I do not know whether Ott said so, but that is what I inferred from the conversation.

CHARLES HILL.

Subscribed in my presence and sworn to before me this 23d day of June, 1886.

[SEAL.]

L. P. DOSH,
Notary Public, Scott Co., Iowa.

470 EXHIBIT "A," L. P. DOSH.

Know all men by these presents that I, Geo. Ott, of the city of Davenport, of the county of Scott and State of Iowa, in consideration of the sum of one dollar to me in hand paid by Charles Hill,

of the same place, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey, unto the said party of the second part, his heirs and assigns, &c., the following goods and chattels, to wit: All my stock of goods, wares, and merchandise, consisting of a general stock of glass, glass windows, doors, window frames, blinds, sashes, and whatsoever now kept in by brick building, No. 410 West Front street, and the entire stock of lumber and manufacturing material now on hand and kept upon the premises of my factory in Davenport, Scott county, Iowa, as well as all goods, wares, and merchandise, lumber, and manufacturing material that may hereafter be purchased by me during the existence of this mortgage to replenish the stock or stocks, reserving to myself the right to sell and manufacture respectively said stock in the ordinary course of my business:

To have and to hold the same forever; and I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever, upon condition, however, that if the said George Ott shall pay to the said Charles Hill, — heirs, assigns, &c., his one promissory note, dated February 20th, 1886, and described as follows:

471 One for three thousand (3,000) dollars, payable one day after date, 18—, with interest at the rate of seven per cent. per annum, according to the tenor thereof, then these presents to be void; otherwise in full force.

And I, the said George Ott, do hereby covenant and agree to and with the said Charles Hill that in case of default made in the payment of the above-mentioned promissory note, or in case of my attempting to dispose of or remove from said county of Scott the aforesaid goods and chattels or any part thereof, or whenever said mortgagee shall choose so to do, then and in that case it shall be lawful for said mortgagee or his assigns, by himself or agent, to take immediate possession of said goods and chattels wherever found, the possession of these presents being sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due or to become due, as the case may be, with all reasonable costs and attorneys' fees pertaining to the taking, keeping, advertising, and selling of said property, the money remaining after paying said sums, if any, to be paid, on demand, to the said party of the first part; said sale to take place where mortgagee may elect, in the county of Scott and State of Iowa, after giving at least ten days' notice thereof by posting up written notices in three public places in said county.

And I hereby further authorize the person conducting said sale to adjourn the same, if deemed in his opinion necessary, from time to time until said property be sold, and to give a bill of sale

472 to the purchaser thereof, which shall be conclusive as to the regularity of all proceedings connected therewith and convey absolutely all of my right and title therein. If from any cause said property shall fail to satisfy said debt, interest, costs, and charges I covenant and agree to pay the deficiency.

And I further covenant and agree that in case of default made in

the payment of the above note or any part thereof, when due, or in case of my attempting to remove the said property or any part thereof from the county of ——, said second party may take immediate possession of said goods, wherever found, in full satisfaction of said debt, and this mortgage shall operate as a completely executed bill of sale of said property, conveying absolutely all my title and interest to and in said property to said second party. I hereby waive all notice of such proceedings and covenant that they shall be conclusive as to my rights and interest.

Witness my hand and seal this 20th day of February, 1886.

GEORGE OTT.

STATE OF IOWA, } ss:
Scott County, }

Be it remembered that on the 20th day of February, 1886, before the undersigned, Bleik Peters, a notary public in and for said county, personally came George Ott, to me personally known to be the identical person whose name is affixed to the foregoing instrument as grantor, and acknowledge the same to be his voluntary act and deed.

473 Witness my hand and notarial seal the day and year last above written.

[SEAL.] BLEIK PETERS,
Notary Public, Scott Co., Iowa.

Endorsed: Chattel mortgage. George Ott to Charles Hill. Filed for record this 26th day of April, A. D. 1886, at 5.07 o'clock p. m., and recorded in Book 2 of Chattels, on page 551. H. Vollmer, recorder. W. Puls, deputy.

EXHIBIT "B," L. P. DOSH.

$3,000.00. DAVENPORT, IOWA, *Feb. 20th*, 1886.

One day after date I promise to pay Charles Hill or order three thousand (3,000) dollars, with interest thereon until paid at the rate of seven per cent. per annum, payable annually, for value received, principal and interest payable at my place of business, at Davenport, Iowa. Should any of said interest not be paid when due it shall bear interest at the rate of 7 per cent. per annum from the time the same becomes due, and a failure to pay any of said interest within 10 days after due shall cause the whole of this note to thereupon become due and collectible at once. If this note is not paid within 10 days after it becomes due I promise to pay all necessary and legal expenses incurred by the holder of this note in the presentation and protesting of the same, as well as a reasonable attorney's fee for the collection of this note, by suit or otherwise. The drawers

474 and endorsers and makers of this note severally waive presentment for payment, protest and notice of protest, *of* and non-payment of this note.

Secured by chattel mortgage.

GEORGE OTT.

Endorsed on back of the note as follows:

"The endorsers, drawers, and makers of this note severally waive presentment for payment, protest and notice of protest, and non-payment of the same." The within note is intended to stand as security to indemnify Charles Hill on account of his endorsement of $3,000 in my favor.

529*a* In the Supreme Court of the United States.

THE SOUTH BRANCH LUMBER COMPANY
vs.
GEORGE OTT *et al.* } 1155.

It is agreed and stipulated that the clerk in printing the record in the above-entitled cause may use and print the memorandum hereunto annexed instead of that portion of the record which is embraced between pages 475 to 529, both inclusive, of which pages the memorandum annexed is a summary.

It is also agreed that the clerk may omit in printing all titles except the first one, except where papers and documents of other suits are introduced in the record of this suit as exhibits.

JOHN C. BILLS,
Att'y for Defendants, Appellees.
EDWARD E. COOK,
Solicitor for Plaintiff, Appellant.

To James H. McKenney, clerk of the Supreme Court.

529*b* *Statement of Assets of George Ott, Assigned April* 27, 1886.

Stock at factory:

Page.		
475.	Door material, unfinished	1,470 75
	Sash " "	1,255 35
	Blind " "	116 54
	Miscellaneous	412 09
	Lumber	10,991 02
	Screen wire	553 35
	Moulding	1,258 16
	Cash	540 50
	Book accounts considered good	4,335 77
	" " " doubtful	1,588 00

Stock at warehouse:

	Doors	7,791 48
	Blinds	2,486 80
	Glazed sash	5,539 59
	Open "	840 72
	Glass	17,405 08
	Miscellaneous	180 78
	Screen wire	59 62

	Oils, putty, and white lead		1,336 43
	Office furniture		250 00
	Teams, wagons, and harness		1,200 00
529*c*	Warehouse and ground, estimated		10,000
	Factory, machinery, grounds, dry kiln, estimated		35,000
			104,612 03

N. B.—On above stock in warehouse and at factory there are two chattel mortgages given:

One for	3,000 00
One for	3,567 12
On warehouse and ground there is a mortgage of	3,500 00
On factory, machinery, and grounds there — two mortgages—	
One for	10,000 00
And one for	500 00
	$20,567 12

Resources—book accounts:

Page.			
476.	Cash on hand		540 50
477.	Book accounts (am't carr'd forward)	2,915 80	
478.	" " "	4,293 90	
		41 87	
			4,335 77
	Total book account considered good		4,876 27
529*d*			
478.	Book accounts considered doubtful	1,588 00	1,588 00
			6,464 27

Door material at factory, unfinished:

480.	Am't forward	243 77	
481.	"	519 07	
482.	"	909 01	
483.	"	1,023 62	
484.	"	1,286 85	
	Add	51 10	
	Miscellaneous for doors	30 60	
484.	Machine work done on door material	102 20	
			1,470 75
485.	Sash material at factory, plain rule	108 18	

Page.			
486.	Forward	251 62	
487.	"	506 74	
488.	"	708 56	
489.	"	1,046 42	
490.	"		1,255 35
	Screen wire		553 35
491.	Material for blinds		116 54
492.	Miscellaneous at factory		412 09
493.	Lumber at factory	3,494 39	
			10,991 02
494.	Moulding at factory	554 90	
529*f*			
495.	Forward	1,186 12	
496.	"	1,465 99	
497.	"	1,992 31	
498.	"	2,389 97	
487.	"	3,407 50	
500.	"	4,101 08	
501.	"	4,193 88	
	Less 70 per cent.	2,935 72	
			1,258 16
502.	Doors in stock at warehouse	9,995 70	
503.		14,940 00	
	Less 60 per cent.	8,964 00	
		5,976 00	
504.	Bro't forward	5,976 00	
	Forward	6,283 44	
505.	Amount net	20 60	
	Screen doors	991 65	
	Condemned doors in stock	47 83	
	Am't forward	7,343 52	
506.	Total		7,791 48
507.	Blinds in stock at warehouse	6,144 35	
508.		8,091 10	
	Less 70 per cent.	5,663 77	
529*g*		2,427 33	
		59 47	
	Total		2,486 80
509.	Glazed windows in stock	10,639 40	
510.	Forward	18,654 25	

Page.			
511.	"	19,269 40	
	Less 70 per cent. and 5 per cent.	13,777 62	
		5,491 78	
512.	(Additional)	47 81	
	Total am't glazed windows		5,539 59
513.	Unglazed sash in stock	1,654 63	
514.	Forward	2,442 93	
515.	"	2,703 76	
	Less 70 and 5 per cent.	1,933 18	
		770 58	
516.	Open sash on hand at warehouse (am't over)	770 58	
	Forward	809 11	
517.		31 61	
	Total net		840 72
529*h*			
518.	Miscellaneous at warehouse	174 78	
519.	" "	6 00	
			180 78
519.	Screen wire		59 62
	Oils, putty, and white lead		1,336 43
	Office furniture		250 00
	Teams and wagons, estimated		1,200 00
	Factory, machinery, dry kilns, and grounds, estimated		35,000 00
	Warehouse and ground		10,000 00

Glass stock:

		Gross.	Net.
520.	Forward	17,140 00	
521.	"	51,327 50	
522.	"	52,347 75	
	Less 75 per cent. and 5 per ct. dis.	39,915 16	
			12,432 59
523.	Forward	4,508 00	
	"	5,769 25	
	Less 80 per cent.	4,615 40	
			1,153 85
524.	Forward	3,715 75	

529*i*

Page.				
525.	"	7,015 25		
526.	"	10,078 25		
527.	"	14,537 35		
528.	"	15,225 79		
		15,580 72		
	Less 75 per ct. and 5 per ct.			3,700 43
529.	Am't over.			
529.		371 51		
	Less 80 per cent.	297 21		
				74 30
				43 91
	Total glass on hand			17,405 08

529*j* [Endorsed:] Supreme Court U. S. 1889, October term. No. 798. The South Branch Lumber Company, appellant, *vs.* George Ott *et al.* Stipulation as to printing record.
[Stamped:] Office Supreme Court U. S. Filed Nov. 22, 1889. James H. McKenney, clerk.

530 That said George Ott holds a lease of a certain stone quarry in Muscatine county, Iowa, known as the "Montpelier stone quarry;" that this lease only gives said Ott the right to remove stone from said quarry and to pay a certain royalty therefor; that the working of said quarry was abandoned some time ago and the said lease is worthless, as this assignee believes.

STATE OF IOWA, } *ss:*
County of Scott, }

I, Charles F. Meyer, being duly sworn, say that I am the assignee named in the assignment of George Ott for the benefit of his creditors; that the foregoing is a true and full inventory and valuation of all the property and estate of said George Ott in full so far as the same has come to my knowledge; that said assignment was made and filed for record in the recorder's office of Scott county, Iowa, April 27th, 1886.

CHARLES F. MEYER.

Subscribed & sworn to by said Charles F. Meyer before me this 14th day of May, 1886.

JOHN C. BILLS,
[SEAL.] *Notary Public, Scott Co., Iowa.*

STATE OF IOWA, } *ss:*
Scott County, }

I, George Ott, being duly sworn, say that I am the person whose property is inventoried in the foregoing inventory by my assignee, Chas. F. Meyer; that the foregoing inventory is a full, complete,

and true inventory, list, and account of all my property of every kind not exempt by law from the payment of my debts, to the best of my knowledge.

GEORGE OTT.

Subscribed and sworn to by said George Ott before me this 14th day of May, 1886.

JOHN C. BILLS,
Notary Public, Scott Co., Iowa.

[SEAL.]

531 In the Circuit Court of the State of Iowa in and for Scott County.

In the Matter of the Assignment of GEORGE OTT.

Thereafter, on the 3rd day of August, there was filed the first report of Chas. F. Meyer, assignee of George Ott, which report is in words and figures following, to wit:

List of General Creditors Who Have Filed Their Claim against the Estate of George Ott, Assigned.

Name of creditor.	Residence.	Am't of claim.	Date of mailing notice of assignment.
M. T. Close & Co.	Iowa City	$73 35	April 30th, '86
Vanhorne, Griffin & Co.	New York, N. Y.	72 50	" 30th, '86
Austin & Eddy	Boston, Mass.	154 26	" 29th, '86
Curtis & Co. M'f'g Co.	Chicago, Ill.	25 20	" 30th, "
Excelsior Varnish Works	New York, N. Y.	27 04	" 30th, "
P. C. Hanford Oil Co.	Chicago, Ill.	84 28	" 29th, "
Wetherald & Wells	Massillon, O., & int.	379 54	" 30th, "
Rush Owen Lumber Co.	Eau Claire, Wis.	1,023 41	" 30th, "
Westville Lumber Co.	" " "	240 70	" 30th, "
J. A. Fay & Co.	Chicago, Ill.	172 94	" 29th, "
I. F. Bloodgood & Co., Lim.	Williamsport, Pa., & int.	6 00	" 30th, "
Martin Kunkle	Davenport, Ia.	52 55	" 30th, "
H. W. Wright Lumber Co.	Merrill, Wis.	4,904 35	" 29th, "
Canastota Glass Co., Lim.	Canastota, N. Y., & int.	1,040 15	" 30th, "
Knox & Foltz, Lim.	New Castle, Pa.	1,638 36	" 30th, "
A. & E. Burton & Co.	Boston, Mass.	43 74	" 30th, "
Jump River Lumber Co.	Prentice, Wis., & int.	146 20	" 29th, "
Jas. P. Gould	Oskosh, "	3,752 07	" 29th, "
Meadville Glass Co., Lim.	Meadville, Pa., & int.	2,127 84	" 30th, "
Hirsch, Ely & Co.	Blossburg, Pa., & int.	978 26	" 30th, "
Streator Glass Co.	Streator, Ill.	278 73	" 30th, "
Grupe & Murray	Davenport, Ia.	24 58	" "
Wahl Bros.	Chicago, Ill.	37 37	" 30th, "
J. C. Matthes & Bro.	Davenport, Ia.	18 35	" 30th, "
Bradford Bros. & Co.	Oskosh, Wis.	879 46	" 30th, "
Crystal Window Glass Co.	Bellaire, O., & int.	3,164 96	" 30th, "
Geo. F. Kimball	Chicago, Ill.	313 37	" 29th, "
Chas. H. Moore & Co.	Cincinnati, Ohio, & int.	79 86	" 29th, "
Perley, Lowe & Co.	Chicago, Ill., & int.	962 00	" 30th, "
Williamson & Libbey L'b'r Co.	Oshkosh, Wis., & int.	1,015 30	" 30th, "
T. W. McClelland & Co.	Davenport, Ia., & int.	213 82	" 29th, "
	Car'd for'd	23,900 54	

List of General Creditors, &c.—Continued.

Name of creditor.	Residence.	Am't of claim.	Date of mailing notice of assignment.
532	To am't br't for'd	23,900 54	April 30th, '86
Bellaire Window Glass W'ks	Bellaire, Ohio, & int.	352 52	" 29th, "
Sickels, Preston & Co.	Davenport, Iowa	80 83	" 30th, "
Davenport Steam Heating Co.	" "	72 55	" 30th, "
Quaker City Window Glass Co.	Quaker City, Ohio, & int.	617 27	" 30th, "
Paine Lumber Co.	Oshkosh, Wis., & int.	3,900 15	" 30th. "
Mrs. J. Schricker	Davenport, Ia., & int.	861 78	" 30th, "
Enterprise Window Glass Co.	Bellaire, Ohio, & int.	968 76	" 29th, "
A. A. Simonds	Dayton, O.	26 18	" 30th, "
Cary, Ogden & Parker	Chicago, Ill., & int.	346 25	" 30th, "
Munroe & Co.	Dumbarton, N. Y., & int.	1,699 59	" 29th, "
Clark, Hurd & Co.	Bernhard's Bay, N. Y.	1,813 67	" 30th, "
C. Getman	Cleveland, N. Y., & int.	5,575 81	" 30th, "
Rowley & Herriance	Williamsport, Pa., & int.	832 81	
Eli & Newman	City & int.	90 55	" 30th, "
C. H. Hamann	"	35 55	" 30th, "
Conway M'f'g Co.	Milwaukee, Wis., & int.	2,582 29	" 30th, "
Johanna Schricker	Davenport, Ia., & int.	10,440 00	" 30th, "
Jas. B. Morgan, Jr.	" & int.	3,533 00	" 30th, "
C. F. Wells & Co.	Pittsburgh, Pa., & int.	463 15	
J. M. Albertson & Sons	Norristown, Pa.	1,710 82	
Ernst Claussen, guardian	Davenport, Ia., & int.	3,000 00	
Chas. Hill	" & int.	3,000 00	
Ernst Claussen	" & int.	540 00	
Christ Mueller	" & int.	7,682 87	" 29th, '86
Getsinger & Son	Bridgeton, N. J., & int.	1,781 53	" 30th, "
Adda Kloppenburg	Davenport, Ia., & int.	3,664 18	" "
M. B. Atwater & Co.	Wausau, Wis., & int.	1,319 79	" 29th, '86
Sprague, Smith & Co.	Chicago, Ill.	436 13	" 29th, "
R. I. Glass Works	Rock Island, Ill.	118 49	" 29th, "
Chicago Lumber Co.	Chicago, Ill.	6,142 72	" 29th, "
First Nat'l Bank	Davenport, Ia.	910 83	
Snider, Miles & Paxton	"	364 39	" 30th, '86
A. R. Gray & Co.	Chicago, Ill., & int.	3,398 31	" 30th, '86
Chas. Vogel & Co.	St. Louis, Mo.	122 60	" 29th, '86
J. E. Patton & Co	Milwaukee, Wis.	88 02	" 30th, '86
J. S. Keator Lumber Co.	Moline, Ill.	243 78	" 29th, '86
Geo. Warnhoff & Co.	Pittsburgh, Pa.	3,047 16	" 30th, '86
Eckstein White Lead Co.	Cincinnati, O., & int.	1,921 69	" 30th, '86
		$97,686 56	

533 *Creditors That Filed Their Claim against the Estate of Geo. Ott, Assigned, and are also Contesting the Assignment.*

Name of creditor.	Residence.	Am't of claim.	Date of mailing notice of assignment.
T. H. Sheppard & Co.	Chicago, Ill., & int.	1,587 92	Apr'l 30th, '86
R. I. Lumber & M'f'g Co.	Rock Island, Ill. & int.	1,473 35	" 30th, '86
C. C. Thompson & Walk-up Co.	Chicago, Ill., & int.	829 14	" 30th, '86
D. O. Cunningham	Pittsburgh, Pa	3,049 94	" 30th, '86
Washington Glass Co.	Ithaca, N. Y., & int.	3,849 28	" 30th, '86
C. C. Thompson & Walk-up Co. and taken from premises.	Chicago, Ill.	2,750 00	Lumber replevied.

Total am't of claims filed within 3 mos., $111,226.19.

Claims Filed against the Estate of Ott, Assigned, Received after July 27th, '86.

Name of creditor.	Residence.	Am't of claim.	Date of mailing notice of assignment.
Conlee Lumber Co.	Oshkosh, Wis.	5,219 69	Apr'l 29th, '86

Notice of Assignment.

Notice is hereby given that on the 27th day of April, 1876, George Ott, of Davenport, Iowa, made a general assignment to me for the benefit of all his creditors, as is provided by chapter 7, title 14, of the Code of Iowa, and that within three months from the date hereof all claims against said George Ott must be presented to me duly verified as provided by law. All persons indebted to said George Ott are required to make payment to me.

Davenport, Iowa, April 27th, 1886.

a-27-d6t-tu CHARLES F. MEYER, *Assignee.*

534 *Creditors That Have Not Filed Their Claim to Whom Notice of Assignment Was Made.*

Name of creditors.	Residence.	Amount.	Date of mailing noti- of assignment.
South Branch Lumber Co.	Chicago, Ill.	37,219 17	April 30th, '86
S. B. Barker & Co	" "	6,425 00	" 30th, '86
C. C. Thompson & Walk- Co. (notes).	" "	654 09	" 30th, '86
W. F. Block	" "	4 05	" 30th, '86
Heath & Milligan M'f'g Co.	" "	128 28	" 30th, '86
Western Sand Blast Co.	" "	6 88	" 30th, '86
Greenlee Bros. & Co.	" "	4 65	" 30th, '86
J. H. Rice Co.	" "	557 35	" 30th, '86.

Notice of Assignment.

Notice is hereby given that on the 27th day of April, 1886, George Ott, of Davenport, Iowa, made a general assignment to me for the benefit of all his creditors, as is provided by chapter 7, title 14, of the Code of Iowa, and that within three months from the date hereof all claims against said George Ott must be presented to me duly verified as provided by law. All persons indebted to said George Ott are required to make payment to me.

Davenport, Iowa, April 27, 1886.

CHARLES F. MEYER, *Assignee.*

a-27-d6t-tu

Certificate of Publication.

STATE OF IOWA, } *ss:*
Scott County, }

I, C. T. Darling, being duly sworn, say that I am foreman of the Daily Davenport Democrat, a newspaper published in said county, and that a notice, a printed copy of which is hereto annexed, has been published in said paper six consecutive weeks, commencing on the 27day of April last and ending the 1st day of June, 1886.

C. T. DARLING.

Sworn to before me and subscribed in my presence by the said C. T. Darling this 19th day of July, 1886.

CARL F. HASS,
[SEAL.] *Notary Public, Scott County, Iowa.*

Fees, 11.75.
Paid by C. F. Meyer, assignee.

535 STATE OF IOWA, } ss:
Scott County, }

I, Charles F. Meyer, being duly sworn, say that I am the assignee of George Ott, of Davenport, Iowa.

That the foregoing is a true and full list of all the creditors of said George Ott who have claimed to be such creditors, with a statement of their claims, showing the names of such creditors, their residence, the amount of their respective claims, with an affidavit of the publication of notice by me to the creditors of said Ott hereto attached; and I also state that I mailed to each of said creditors a printed copy of said notice, directed to each of them at their said residence, at the date mentioned in said foregoing schedules; and I further state that the foregoing schedules and the statements contained in the same are correct and true as I verily believe.

CHAS. F. MEYER.

Sworn to and subscribed before me by said Chas. F. Meyer this 3rd day of August, 1886.

[SEAL.] JOHN C. BILLS,
Notary Public in and for Scott County, Iowa.

Thereafter, on the 4th day of October, 1886, there was filed the petition of assignee as to making dividends, which is in words and figures following, to wit:

In the Circuit Court of the State of Iowa in and for Scott County.

In the Matter of the Assignment of GEORGE OTT.

Charles F. Meyer, the assignee of said George Ott, respectfully shows to said court as follows, to wit:

That soon after the making of said assignment several parties who claim to be creditors of said George Ott brought actions against him, said Ott, in this court and in the district court of Iowa in and for Scott county, and in said several actions caused writs of attachment to issue against said Ott, and served the same by garnishing him, said Chas. F. Meyer, and said plaintiffs seek and claim to hold him, said Meyer, as such garnishee, and claim to recover judgment against him upon the ground that said assignment so made to him by said Ott was and is fraudulent as against them, and was made to hinder, delay, and defraud the creditors of said George Ott, and that said actions and garnishments are still pending and undetermined.

That the South Branch Lumber Company of Chicago, one of the creditors of said Ott to a large amount, has not filed its claim under said assignment as such creditors, but brought its action against said Ott by attachment, after said assignment was made, in the district court of said Scott county, and has removed said action into the circuit court of the United States for the southern district of Iowa, where the same is still pending.

That said company claims to recover of said Ott more than
536 $30,000.00, and at the time of bringing said action caused this assignee to be garnished as aforesaid; that since said action was so removed said South Branch Lumber Company has filed its bill in equity in said circuit court of the United States, making this assignee and others defendants in the same; and in said bill said company asks to have said assignment decreed to be void, and to have the same set aside as fraudulent and void, and asking to have a receiver appointed by said U. S. court to take possession of the fund & property in the hands of this assignee belonging to said estate, and asking that this assignee be enjoined from making any dividends from said fund to the creditors who have filed their claims under said assignment until the further order of said U. S. circuit court.

This assignee further shows that by the provisions of chapter 115 of the Laws of the 21st General Assembly of this State it is provided that in such assignment the assignee shall dispose of all personal property of the estate and divide the proceeds of the same among the creditors entitled thereto within six months of the date of the assignment, unless the court or judge, for good reason shown, shall extend the time within which such disposition shall be made.

That this assignee cannot, with safety to himself, make any such dividend while said garnishments are pending and undetermined or while said suit in equity is pending in said U. S. court.

This assignee therefore asks that the time for dividing said fund may be extended by order of this court until said proceedings antagonistic to said assignment and seeking to reach and appropriate said fund and to hold this assignee personally responsible for the same shall be disposed of and determined.

This assignee further shows that he attaches hereto a report of the present condition of said estate and fund for the information of the court and of the creditors of said estate.

537 In the Matter of the Assignment of GEORGE OTT.

DAVENPORT, IOWA, *October 1st*, 1886.

Since taking possession, as assignee, of Mr. George Ott'- affairs I can report to the court that I have used due dil*l*igence in disposing of the personal property entrusted to my care: also have made efforts to sell the real estate, but have so far received no offers for the same.

I have now on hand—

Cash in bank	22,500	
Bills receivable & accepted drafts	6,500	
Open book accounts	8,700	
Balance stock on hand, " hard sale," may amount to	1,000	
Glass in hands of sheriff under under D. O. Cunningham, sp. attachment	3,735	
Lumber replevined by C. C. Thompson & Walkup Co.	3,494	39

I have paid all running expenses, taxes, and insurance up to date.

Yours respectfully, CHAS. F. MEYER, *Assignee.*

Thereafter, at a term of the circuit court of the State of Iowa, begun and held at Davenport, in and for said county, on the second Monday in September, A. D. 1886—present, the Hon. Nath'l French, judge of the second circuit of the seventh judicial district of the State of Iowa; Nat. Leonard, sheriff of said county, and W. J. Birchard, clerk of said court—and the following-entitled cause coming on to be heard on the 4th day of October, A. D. 1886, and still during said term of said court, the following, among other, proceeding were had therein, to wit:

In the Matter of the Assignment of GEORGE OTT.

Now, this matter coming on to be heard on the petition of Chas. F. Meyer, assignee, to have the time for making a dividend in said matter to the creditors of said Ott, and the court having heard said petition and having duly considered the same, it is hereby ordered and adjudged that the time provided by statute for making a division of the proceeds of said property assigned in this matter be, and the same is hereby, extended until the garnishment proceedings against said assignee as to the funds in his hands as such assignee are determined and until all the proceedings antagonistic to said assignment and seeking to hold said assignee personally in regard to said fund shall be determined and until the further order of this court.

538 Thereafter, on the 18th day of Nov., 1886, there was filed the "motion of the Meadville Glass Company, Limited, & of Hirsch, Ely & Company, creditors," to set aside order extending time for assignee & — pay dividends, which is in words and figures following, to wit:

In the Circuit Court of the State of Iowa in and for Scott County.

In the Matter of the Assignment of GEORGE OTT. No. 5330.

To the honorable the circuit court aforesaid:

Now comes the Meadville Glass Company, Limited, and Hirsch, Ely & Co., creditors of said George Ott, having presented and proved their claims under said assignment according to law, and move the court that the order of this court made and entered October 4th, 1886, extending the time for the assignee in said assignment as to the making of dividends as provided by statute among the creditors of said Ott who have presented their claims, may be set aside and revoked, and that said assignee may be ordered to forthwith proceed to make a *pro rata* dividend of the money in his hands as such assigneee as is provided by law.

Dated November 17, 1886.

THE MEADVILLE GLASS COMPANY, LIMITED, AND HIRSCH, ELY & CO.,
By FRED. HEINZ,
Their Attorney.

539 William Heesch, called for defendant, in answer to interrogatories propounded to him by counsel for defendant, testified as follows:

DAVENPORT, IOWA, *April 8th*, p. m., 1887.

By Mr. BILLS:

Interrogatory 1. Mr. Heesch, I want to ask you if you know Mr. George P. McClelland, of the firm of T. W. McClelland & Co.?

A. Yes, sir; I know the gentleman.

2. State whether or not he was in Mr. Ott's office a short time before Mr. Ott's assignment.

A. Yes, sir; he was.

3. About how long before do you think?

A. It may have been a few days, three to four days, before the assignment.

4. Do you know what business he had there, if any?

A. What business he had he must have had with Mr. Ott privately; I didn't overhear anything of any consequence.

5. Do you know whether he talked with Mr. George Ott at that time?

A. Yes, sir.

6. Did you hear what they said?

A. No, sir; not all of it.

7. Did you hear anything said about Mr. McClelland having a bill to collect from Mr. Ott?

A. I can't state anything definitely in the matter; I can't recall to my recollection.

8. Did anything occur at that time or soon afterwards to lead you to believe he was there to collect a bill?

540 Objected to as irrelevant and immaterial, calling for the witness's conclusion.

A. If I recollect right there was a statement left by him at that time.

9. A statement left by him?

A. Showing the amount of account.

10. What account was it?

A. McClelland's account against Mr. Ott.

Objected to unless they produce the statement, which is the best evidence.

11. State whether or not it was an account which Mr. Ott owed McClelland, as you understood it.

Objected to as the paper is the best evidence.

A. That is as I understood it; yes, sir.

12. Who had that account at that time, in whose hands did you see it, or who left it, if anybody, there, or was it left with you?

A. If I recollect right, it was left in the office by Mr. Ott.

13. Do you know where Mr. Ott got it?

A. I suppose he got it from George McClelland that day.

Answer objected to as a mere guess.

14. State whether George McClelland was still there when Mr. Ott handed it to you?

A. I can't recollect.

15. Did you hear either one of the McClellands say any-
541 thing about wanting the pay for this wire cloth at that time, any time before the failure?

A. Not in my presence that I can remember of.

16. State whether or not Mr. Ott said anything to you about their urging him to make said payment?

Objected to as immaterial and irrelevant and hearsay.

A. Yes, sir. Mr. Ott told me something to the effect that McClelland desired a settlement for the account or a portion of it.

17. What do you mean by settlement, payment, or payment with paper?

A. Paper, if I recollect right the time, Mr. Ott was to give McClelland a paper for the balance of the time the account would run.

18. He was to give McClelland paper which would be due at the time the account became due?

A. Yes.

19. Do you know anything about the order of this wire cloth at the time Mr. Ott made the order from McClelland; do you know anything about that?

A. Yes, Mr. McClelland—it was understood between Mr. Ott and Mr. McClelland that McClelland would see to ordering the wire, and McClelland requested me once or twice by telephone whether I had made out the memorandum desired to send in a specified order so as the parties would have it filled.

Objected to all of the answer after the words "yes" as not responsive to the question, and also to that part of it relating to the understanding between Ott and McClelland as hearsay.

20. How did you get your information; did you make out the order for the wire cloth?

542 A. I made out a memorandum for it.

21. At whose request?

A. I made it at the request of McClelland, with the knowledge that Mr. Ott had agreed to have the wire purchased that way.

22. Now, Mr. Heesch, as you understand it, did Mr. Ott buy the wire from McClelland or did McClelland buy it from the Chicago party at the request of Mr. Ott and buy it for Mr. Ott? How was that?

Objected to unless he was present and heard the conversation.

A. I can't remember what the details were—whether McClelland was to buy it for Ott or whether he was to buy it and then sell it to Ott, but, as I understand the matter, in buying a larger quantity they were able between the two of them to place a larger order at a better figure.

23. Did you understand that McClelland made a profit out of Ott on it or that Ott had it at the same price at which McClelland bought the whole of it?

A. I supposed Ott had it at the same price McClelland bought it; whether that would be a fact or not I could not tell.

That is all.

Cross-examination by Mr. COOK:

Cross-interrogatory 1. Mr. Heesch, I show to you an entry upon the day book of George Ott, marked Exhibit "4" to your original deposition, under the date of Sep. 20th, bought of T. W. Mc-
543 Clelland & Co. screen wire for factory account, as per their bill rendered, dated Feb. 19th, $904.17, and in the same connection I call your attention to a bill on T. W. McClelland & Co.'s bill-heads, dated Feb. 19th, 1886, George Ott to T. W. McClelland & Co, for $904.17, marked due June 1st, 1886, and ask you, first, if the entry referred to is in your handwriting, and, secondly, if the bill referred to is the bill from which you made the entry?

A. Yes; the entry is in my handwriting, and the bill referred to is the bill from which I made the entry.

2. When you sent to McClelland & Co. the list or order—whatever it may be termed—of the screen wire, etc., did you keep any copy of that; did you enter in the letter book or elsewhere a copy of it; is there a copy in the letter book or a memorandum of it? I will ask you to examine the letter book and see if you find a copy of any such order in the letter books. Do you find it in the letter book?

A. If there is a copy in there it is not indexed so as to find it readily. I hardly think there was a copy taken of that order or memorandum.

3. Now, Mr Heesch, you understand from the bill that was rendered and the entry that was made that this account was due June 1st, 1886. How did you know it, from Ott to McClelland & Co.?

A. I would have known it so far as the bill would show.

4. When George P. McClelland was there and talked with Mr. Ott your understanding was not that McClelland was asking for payment, but simply for paper that should become due at that time—a note. Is that correct?

544 A. That was the idea; yes, sir.

5. You don't remember hearing either from McClelland or Ott that McClelland had demanded payment in cash of that account a few days before the assignment, do you?

A. No, sir.

6. You didn't have any personal knowledge of the arrangement or contract made by Mr. Ott with George P. McClelland about this wire screen?

A. No, sir.

That is all.

Redirect examination by Mr. BILLS:

Redirect interrogatory 1. Mr. Heesch, did this Edwards draft which Mr. Ott gave to McClelland & Co. on the 26th day of April, 1886, become due in 60 days from that date?

A. From the date it was issued?

2. Yes; from the 26th day of April, 1886. Was it a 60 days draft?

A. The draft given to McClelland & Co. against the account of Edwards & McCullough became due in 90 days from April the 24th.

3. In July some time?

A. Yes, sir.

Recross-examination by Mr. COOK:

Recross-interrogatory 1. I call your attention to the letter book of Mr. Ott's and the press copies as follows: On page 320, the
545 26th of April, to Howell & Jewett, Atchison, Kansas; also on page 321, to one on the same date, to J. Moeizel, Des Moines, Iowa, and on page 325, also to one on the same date, to Edwards & McCullough, St. Paul, Minn., all signed George Ott per H., and ask you if they are the copies of original letters written and sent by you?

A. Yes, sir.

We offer in evidence these pages of the letter book to be copied by the notary and attached as Exhibits "X," "Y," and "Z."

That is all.

WM. HEESCH.

STATE OF IOWA, } ss:
Scott County, }

Subscribed and sworn to this 13th day of April, 1887, before me, Flora Haddix, a notary public in and for Scott county, Iowa.

Witness my hand and notarial seal the day and year last above written.

FLORA HADDIX.
[SEAL.] *Notary Public, Scott Co., Iowa.*

546 AP'L 26, '6.

Messrs. Howell, Jewett & Co., Atchison, Kansas.

GENTS: I to-day issued a d'ft on your account in favor Chrs. Mueller of this city for $744.31, at 90 days, April 24th, being a/c't of our invoice, $779.11, less allowance for freight, $34.80, which please accept when presented for acceptance and greatly oblige,

Yours truly, GEO. OTT.
H.

EXHIBIT "X."

547 AP'L 26, '6.

J. Moetzel, Esq., Des Moines, Ia.

DEAR SIR: I was to-day very much in need of funds, and, being

desirous of making a remittance to Chris. Mueller, of this city, I took the liberty of issuing d'fts on your account in his favor as per statement enclosed. Having extended the time some over 60 days, I trust you will have no objection to accept same when presented by Mueller, and you will thereby greatly favor

Yours truly, GEO. OTT. H.

EXHIBIT "Y."

548 AP'L 26, '6.

Edwards & McCullough L'b'r Co., St. Paul, Minn.

GENTS: I was to-day very much in need of funds and issued a d'ft on your account, in favor of T. W. McClelland & Co., for bill of 24th (less fr't, $28.41), making df't 90 days, April 24th, for $674.74, which please accept when presented or remit to them should you desire to discount the bill, and greatly oblige

Yours truly, GEO. OTT. H.

EXHIBIT "Z."

549 In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division.

THE SOUTH BRANCH LUMBER CO.
vs.
GEORGE OTT *et al.*

Messrs. Cook & Dodge, Smith & Helmer, and A. J. Hirschl appear for plaintiff.

Messrs. Bills & Block appear for George Ott and J. B. Meyer (substituted assignee).

Mr. Bleik Peters appears for Addie Kloppenburg.

Mr. Ernst Claussen appears for Charles Hill.

Testimony on Part of Defendants.

DAVENPORT, IOWA, *April 7th*, 1887—Thursday, a. m.

Deposition of George Ott.

550 Mr. GEORGE OTT, Sr., a witness on part of defendants, being first duly sworn, in answer to interrogatories propounded to him by counsel for defendants, testified as follows:

DAVENPORT, IOWA, *April 7th*, 1887—Thursday, a. m.

By Mr. BILLS:

Interrogatory 1. What is your name?

A. George Ott.

2. How old are you?

A. 60.

3. Where do you live?
A. Davenport.
4. How long have you lived in Davenport?
A. 29 years.
5. What business have you been engaged in during that time?
A. Painting, and sash and doors.
6. When did you begin that business—the sash and door business?
A. I believe '60 or to '61.
7. Did you manufacture?
A. No.
8. When did you begin to manufacture?
A. It is now 6 years; I believe pretty near 6 years.
9. Did you own your manufactory?
A. No; I didn't own it; I borrowed the money when I started it up, you know?
10. Well, you had the title to it in your name?
A. Yes; I had the title to it; yes, sir.
11. Do you know about how much money you invested in the factory and machinery and everything connected with the manufacturing business there?
A. In the last 6 years?
12. At any time.

551 Objected to as immaterial.

A. I started small and made all the time a little bigger.
13. How much money altogether did you ever put in it, do you think?

Objected to as immaterial.

A. Not so particularly, $36,000 or $40,000. I added all the time to it, you know; not fixed, you know.
14. Do you mean that the whole amount that you had invested there up to the time you made the assignment was about $40,000?

Objected to as immaterial.

A. Was over $40,000.
15. How much over?

Objected to as immaterial.

A. I cannot tell so very particularly, you know.
16. Did you have a warehouse?
A. The warehouse didn't belong to the factory.
17. Did you have a warehouse separate from the factory?
A. Yes, sir.
18. Did you own that?
A. Yes, sir; there was a mortgage for $3,500 or $4,000.
19. How much money did that warehouse cost you, as near as you can tell?

Objected to as immaterial.

A. Fourteen, fifteen, sixteen thousand dollars. I built first one story, then two stories, then built three stories.

552 20. What other real estate did you own?

A. I have none except my homestead.

21. How much did your homestead cost you?

Objected to as immaterial.

A. I traded it off. I had a house here on Second street; it was leased property. I traded off to Decker for this home. I gave him that house, then I borrowed three thousand dollars, and that was my homestead.

22. About how much did your homestead cost you in all, do you think?

Objected to as immaterial.

A. The house what I give him—I believe that house cost me $4,500; I gave him $3,000 besides.

23. Have you spent any money on the homestead since that?

Objected to as immaterial.

A. Very little in improvements—little things, you know.

24. About how many men did you employ in the manufacturing business before your failure?

A. 120 men; maybe 125 or 128—something like that.

25. Do you know about the amount of your business per year that you did?

A. The first year and the year before the last I believe it was fully $300,000.

26. Did you keep men on the road travelling; if so, how many?

A. One, my son.

27. Did you have some stone-quarry property before your failure?

A. Yes.

28. Where was that located?

A. In Muscatine Co.

29. How much money did you invest in that stone quarry,

553 as near as you can tell?

Objected to as immaterial.

A. Fifteen or sixteen thousand dollars.

30. You still owned that at the time of the assignment?

A. Yes.

31. Was it a leasehold or free?

A. A lease.

32. You may state, Mr. Ott, what brought about your assignment, if there was anything in particular that caused it.

A. Everything was so cheap; price running down every day; cheaper every year and every year. I thought surely it get better.

33. For how long a time before your assignment had the goods you dealt in been going down in price?

A. 3 years.

34. Was there any other cause which brought about the assignment at that time?

A. I have to pay a great many interests, you know.

35. Anything else that caused it?

A. Sure, when a man have no money have to buy something; have to pay more for it; have to pay a big price for lumber.

36. Was there any trouble about selling goods at that particular time?

A. Yes; it was very hard to sell it, you know, except low prices, you know.

37. Can you state any reason that caused the market to be very dull at that time?

A. Over production and the strike. When you pay a man $2.50 he like to quit; must have him; have to put it up all the time.

38. What strikes do you refer to?

A. That was the last three years. When I started the
554 factory no man understood the business; have to go North for men; have to pay them big wages. I paid the first four months $5.00 a day.

39. You state whether or not what was called the Southwestern strike—the railroad strike from St. Louis—took place just before your assignment.

A. Can't ship nothing to St. Louis. That was trouble, too, you know.

40. Was your son out on the road at that time, just before the assignment?

A. On the road; can't do anything.

41. Was he able to sell any goods?

A. Nothing at all; giving them half for nothing; was not a sale.

42. You may state how it was you came to give Mr. Chas. Hill a mortgage on the 20th of Feb., 1886.

A. The three notes were due; I like to renew them, you know. When I gone to see him I thought he feel not just right. I tell him I had better give him security.

43. Mr. Hill had endorsed notes for you at what place; what bank?

A. First in the Citizens' National Bank, and last in the First National Bank.

44. How long had he been endorsing these notes for you?

A. 10 years; 11 years.

45. To what amount?

A. Pretty near that same amount.

46. $3,000. Well, what did he say to you that made you think he wanted security?

A. He tell it was better; maybe I die or something happen, you know; better have security.

555 47. When was that?

A. It was in Feb. when I gave it to him; yes, at that time, the 20th of Feb.

48. Who got the mortgage made out?

A. Mr. Peters.

49. Who got Peters to do it; who asked him?

A. I told him.

50. What was done with the mortgage after Peters made it?

A. He gave it to me. I gave it by and by to Charles Hill. I told him it was no use recording it; it would hurt my credit. I thought I could pull it through.

51. You thought it would hurt your credit. What did Mr. Hill say that made you tell him you would rather he would not record it?

A. He said it was better for me when he not record it. He said that was all right.

52. How long after it was made was it—how long after the 20th of Feb.—that you gave it to Mr. Hill?

A. I believe 14 days, 15 days, 16 days I give it to him. I told him he could put it in his safe the same as I have it.

53. You may state how it happened that you give a mortgage to Addie Kloppenburg at that same time.

A. The judge wanted security, you know. I told Bleik Peters I have no security what is free. I had to give him that mortgage, you know.

54. Who made out that mortgage?

A. Bleik Peters.

55. What was done with it after it was made out?

A. He left it with me. I give it to him 15, 20, 21, 22 days I give it to him. I told him he can put it in his safe.

56. Did you tell him anything about putting it on record?

A. I told him don't put it on record; hurt my credit, 556 you know.

57. What was the consideration of that mortgage to Addie Kloppenburg; what did you give it to her for; what did you owe her?

A. I owe her so much; that is the reason.

58. How did you happen to?

A. I have the child when she was very small. She has two-thirds from a farm, and that was some interest, you know; some land what she got; she sold a little piece of the farm to the railroad; she had eight hundred and some dollars from her grandfather; not from me, from her mother's father.

59. How is she related to you, if she is?

A. My daughter was married to Kloppenburg.

60. You were her grandfather?

A. Yes.

61. Were you her guardian, too?

A. Yes.

62. About when were you appointed her guardian?

A. Right when the father died, you know.

63. You are the George Ott who made the assignment in this instance on the 27th of April, 1886?

A. Yes.

64. You may state when you made up your mind to make said assignment.

A. On the 27th of April, in the morning.

65. The 27th of April, 1886?

A. Yes.

66. You may state whether or not, at the time you made the said mortgage to Charles Hill and the mortgage to Addie Kloppenburg, on the 20th of Feb., 1886, you had any thought or intention of making an assignment for benefit of your creditors?

557 A. No; I was all the time in hopes that times get a little better and I can make it. There was nobody would push me—nobody.

67. You may state whether or not you at any time prior to the 27th of April, 1886, made any change in the manner in which you conducted the business in reference to making an assignment.

A. No change. No, I paid up the last day, the 26th, when ople son come home; can't sell anything; make me uneasy; I t ... I could make it; every day harder. my

68. You may state whether or not prior to the 27th of April, it you made any payments to any of your creditors with intent to pr... fer them in reference to making an assignment.

A. No, sir; I paid small bills all the time same as before.

69. You may state how it happened that you paid $105 as interest on the mortgage on your homestead a day or two before the assignment.

A. It was due every six months is my interest due; it was due, that was the reason; he sent for —; I paid, you know.

70. State whether or not you could have paid the whole of that mortgage so far as its being due and receivable is concerned. Could you have done it if you wanted to?

A. Yes; it was $5,400 standing out, you know; yes, I can do that.

71. Could you at any time prior to the 27th of April, 1886, steal or dispose of any of your property with intent to defraud any of your creditors or with intent to prefer any of them with reference to said assignment?

Objected to as calling for a conclusion.

558 A. No.

72. Did your son come home, just before the assignment was made, from his trip?

A. Yes.

73. How much did he usually sell on a trip he made?

A. He shipped on the river from eighteen to twenty thousand.

74. He would sell, you mean, from eighteen to twenty thousand on a trip?

A. Yes.

75. How much did he sell this last trip?

A. Not a dollar.

76. Did you tell Charles Hill and Bleik Peters that they might record these mortgages at any time before your assignment?

A. Yes.

77. When did you tell them so?

A. On the 26th.

78. Why did you tell them so on the 26th?

A. I have no reason. I feel on the 26th that there — have to be something done, you know.

79. What do you mean by having something to be done?

A. I think when I can't sell anything I must stop.

80. Do you mean to have to stop payment?

A. Stop payment; yes.

81. If you stopped payment you wanted this mortgage — be recorded, is that what you mean?

A. That is what I think.

82. How long a time have you been doing business with the South Branch Lumber Co. of Chicago?

A. A. I believe from 1881—I believe from 1881.

559 83. What was the nature of that business that you did with them?

A. I don't know what nature is.

84. What kind of business did you do with them—what was it?

A. I bought lumber and sold them sash and doors.

85. Did you do a large business or not large?

A. A middle business when we began, sure he put me all the time a little deeper. When I wanted 20 they sent 40, 30. The business got all the time larger.

86. Was the business increased in that way at your request and instigation or at theirs?

A. They like to sell all the time more lumber; they wanted me to buy all my lumber from them.

87. You say they wanted you to buy all your lumber from them?

A. Yes.

88. Did you do so?

A. I no bought it all, but most, from them.

89. Who was the man of that firm that you did the business with?

A. Frank Beidler.

90. Did you see him often?

A. Yes; every month—three weeks.

91. Where did you usually see him?

A. In Chicago.

92. Do you remember the circumstance of giving Mr. Heesch, your book-keeper, a statement to send to the South Branch Lumber Co., or some figures to make up a statement?

A. Yes.

93. I will ask you if you saw Mr. Beidler about that time?

A. He told me he wanted a statement—that is, what I owed other people; never afraid what I owe him; what I owe other people.

560 94. When was that?

A. When he told me that it was on Jan. 2nd or 3rd; wanted what I owed other people; he was not particular what I owed him.

95. When you made up that statement, these figures, and gave

them to Heesch, state whether or not you included what you owed to the South Branch Lumber Co.

A. I figured in Jan. that I owed him $36,000—maybe a little less or a little more.

96. Did you include that in the figures you gave to Heesch?

A. No; it was $36,000 that I got after the statement had been sent up to Chicago.

97. How long after before you were in Chicago?

A. I was there every Monday.

98. The first time you went up after the statement was sent, did you see Beidler?

A. Yes.

99. Did you say anything about the statement, or did he to you?

A. No. What I owed other people; he was afraid other people should trouble me, you know. He say, I never trouble you, you know.

100. Mr. Ott, did you know anything about that book that Heesch kept, called the trial-balance book?

A. No, Mr. Bills.

101. Did you ever examine it?

A. No; I have very little schooling.

102. What knowledge have you of the English language?

A. Very little, you know.

103. Did you read it?

A. No; very little, Mr. Bills.

104. Do you write the English language?

A. No.

561 105. Had Mr. Heesch ever called your attention to this trial-balance book that he kept?

A. No. He was so long with me, you know, I think more of — than of my son.

106. Why did you make out these figures for this statement of Jan. 23rd, 1885? Why didn't you ask Heesch to figure it?

A. I like not to tell Mr. Heesch; I never tell Heesch that I figured myself—what's the reason that I stay there when he is gone to dinner, and I thought I figure that up.

107. Why didn't you have Heesch figure that up?

A. I thought it was no use to tell him what Beidler tell me. Beidler tell me not for himself; they give me so much credit. We were too good friends together; that was the trouble.

108. You and Beidler were good friends together?

A. Yes.

109. Mr. Ott, what were the facts about those four car-loads of glass which were on the side track of the C., M. & St. P. at the time of the assignment?

A. The facts were I left them there.

110. State the whole thing—how it was, how they came to be there, and what arrangement you had about unloading freight.

A. We have all the time plenty to do; all the time cars on the track, you know. If we can unload it the house ain't big enough;

the cellar no hold it, you know; that the reason it was on the side track, you know.

111. You gave Mr. White, the agent of that road here, a paper on the morning of the assignment. Was that given before the
562 assignment was executed or afterwards? How did you come to give that to Mr. White?

A. Was very accommodating to me; every week three or four hundred dollars. I tell him don't be afraid; I leave plenty on the track would be security, in any way.

112. Security for what?

A. For the freight.

113. For the charges on the freight?

A. For the charges on the freight; yes, sir.

114. Is that the reason you gave him that paper—because you had made that agreement with him?

Objected to as leading and calling for conclusions.

A. Yes, sir; a long time before.

115. Do you recollect about what time in the morning it was that you executed the assignment?

A. I believe it was 9 o'clock; 8 or 9 o'clock.

116. When did Meyer take possession of your property after the assignment—how long after?

A. When I came home he come right up. I could not tell particularly; in the morning; right away; 9 or 10 o'clock.

117. Did you turn over the keys of the property at that time?

A. Yes.

118. When did you stop the factory?

A. Mr. Meyer run the factory four or five weeks.

119. Was not stopped at all?

A. Yes, sir; was not stopped at all.

120. I believe you had an order of court to run it?

A. Yes, sir.

563 121. State whether or not you turned over the control of your property to Mr. Meyer at that time.

A. Yes, sir; everything that was there.

122. Did you have anything concealed away—hidden away?

A. No; I paid on Monday $1,558.

123. To the workingmen?

A. Yes.

124. Was that the day before the assignment?

A. Monday; yes, sir.

125. State whether or not that was the day for paying your workingmen.

A. Yes, sir; pay every Monday—every Monday night.

126. Were you employed after the assignment by the assignee to assist in the business?

A. I believe five months.

127. Do you know when Mr. Meyer, the assignee, got possession of those car-loads of glass from the railroad Co.?

A. I don't know particularly; it was the first day or second day.

I don't know that particularly. I was in the factory, you know; attending to the factory, you know.

128. You were there during several years before your assignment. What was your part of the business—what kind of work did you do?

A. In the factory every morning to the night. Come home at 12 and after 5. I was all the time in the factory.

129. Were you most of the time at the factory or at the warehouse?

A. At the factory.

130. Where was the office?

A. A little office in the factory; a telephone.

131. Where was the main office?

A. On Front street.

564 132. In the warehouse?

A. Yes, sir.

133. How far apart were the factory and warehouse—how many blocks?

A. Half a mile.

134. Who had charge of the office in the warehouse?

A. Bill Heesch.

135. State whether or not for two or three months prior to the assignment you purchased any more property, lumber, or anything else than you usually had done during such length of time?

A. No; I bought not a dollar's worth more. I liked to buy that last lumber not from Beidler; Beidler tell me I had better take it rom him; it was a little too much what I owe him; better buy from some one else; everybody was ready to sell me; better buy from him.

136. Do you know about the amount of business you had had with the South Branch Lumber Co.?

A. I believe it was from $180,000.

137. You say the last lot of lumber you did not want to buy of him. What did it amount to?

A. Like no to buy of him for the last three months; he told me better buy of him, you know.

138. Did you buy anything of him after the statement of the 29th of March, 1886, which Mr. Heesch sent to him? That was 1886?

A. Yes; that was 1886. I believe four cars.

139. Did he make any objections to selling you on credit after that statement was sent to him?

A. No.

565 140. Did Mr. Beidler come down to see you right away after that statement was sent?

A. Yes.

141. Do you know whether he examined the books?

A. I asked if he like to see the books. I told Bill to give him the books.

142. You told Bill Heesch to give him the books?

A. Yes.

143. Do you know whether Mr. Beidler looked at the books?

A. He can take them along to my house and keep them as long a time as he wants to.

144. You say this time when he came and wanted to see the books was after the statement of March the 6th was sent to him?

A. Yes.

145. How long after, do you think?

A. I don't know particularly how long it was; you know it was not very long.

146. Do you know how long he examined your books at that time?

A. I believe he came in in the morning, 8 or 9 o'clock, and staid there. It was 3 o'clock, maybe 4 o'clock, sure. I was not all the time there. I was in the factory and Mr. Beidler was in the office, you know.

147. You were not present when Mr. Beidler was looking at the books?

A. I gone away; I tell him have to go to the factory, and I tell Bill give him everything what was there, you know; give him the books.

148. Did you take any money out of the business and store it away—anything for your own use?

A. No; there was $558 in the bank. I was better off when I had it there. I give every cent what was there.

Adjourned till April 7th, 1887, 2 o'clock p. m.

566 149. State whether or not the sureties on your bond, guardian's bond, in the matter of the estate of Addie Kloppenburg, are solvent or whether anything can be collected from them

Objected to as immaterial.

A. I believe not.

150. State whether or not there is any other source from which Addie Kloppenburg can realize the money that is due to her from you as her guardian, except from the security of the said mortgage which you give her.

Objected to as immaterial.

A. I believe not.

151. Do you know about how much freight you paid to the C., M. & St. P. R. R. in the course of a year?

A. No; I do not know that particularly, you know. I paid—I believe I saw a statement in Chicago, what they brought in for six months, $12,000 or something in that neighborhood.

152. About $12,000 for six months?

A. Yes.

I believe that is all I want to ask him.

Cross-examination by Mr. SMITH:

Cross-interrogatory 1. When did Addie Kloppenburg's father die?

A. Pretty near twelve or thirteen years.

2. Is her mother living?
A. Yes, sir.
3. Where does her mother now reside?
A. At Omaha.
567 —. Is she married?
A. Yes.
5. How long ago did she marry her present husband?
A. Two or three years, you know, afterwards.
6. Two or three years after Addie's father died?
A. Yes, sir; I believe so. I can't tell sure.
7. Where has Addie lived since her father's death?
A. With me, in the house.
8. Who has boarded and clothed her since her father's death?
A. I.
9. Bought her books and educated her?
A. Yes.
10. Have you kept any account of the amount of money you have expended upon her care and education?
A. Not very particularly, no; she cost not very much. We don't live high-toned, you know.
11. Have you got any account or ever made or kept an account of the money you have spent for clothing, books, and expenses?
A. No; no, not particularly, you know.
12. In ascertaining the amount due from you as her guardian you rated interest upon the same as received by you?
A. Yes.
13. You haven't deducted anything for her board, clothing, and other expenses?
A. Except for what I give cash out—for the court, for Bleik Peters.
14. But you deducted nothing for her board, education, books, and clothes?
A. No; I want something for the child coming in——

Voluntary statements of the witness objected to and moved to be stricken out.

568 15. When did you start your manufacturing establishment?
A. Well, now, pretty near six years; may well be six years.
16. What did the grounds and buildings upon it at the time you bought it cost you?
A. $2,700.
17. What buildings have you erected since?
A. The building, you know, was not fit for manufacturing.

Mr. BILLS: I object to the interruption of the witness when he is trying to answer the question.

A. The building was not fit for manufacturing. It was three stories; make two story; have to take the floors down to get it in shape and fix it up, you know; no windows in it; nothing at all; and we worked on it ten months before we put the machinery and everything in it.

18. Will you please answer the question I asked you: What buildings you put up on that property after you bought it?

A. One building; I believe 40 by 80 or 90.

19. How high?

A. One story.

20. Wood or brick?

A. Wood; tin roof on it. A shed on the other side—one hundred-foot shed—and a couple of small houses outside, you know; on the building put up a boiler-house—what you call it—brick, 20 by 50 or 60; I don't know particularly; put up a shaving-house, brick; the kilns—shall I tell the kilns, too?—dry kiln; big shed for mouldings, and a stable for the horses; that is the buildings, all, you know.

21. What did fixing over the old building cost?

A. I can't tell particularly; all done by the day, you know.

569 22. Can't you give a pretty close estimate of the cost?

A. No.

23. Have you got no account?

A. No; all done the same as by the day.

24. What did this large house with the tin roof and shed cost you?

A. That was done all by the day.

25. Can you give us an estimate of what it cost you?

A. No.

26. Have you got no account of what it cost?

A. No.

27. What did this machine and boiler room cost?

A. All done, except the brick—by the thousand—by the day.

28. Can you give an estimate of what it cost?

A. No.

29. Is it the same with the dry kiln, the big shed, the stables, and the two small sheds?

A. Yes.

30. You have no memoranda by which you can arrive at the cost?

A. The lumber bill and the stone bill. You know that is all in the books, you know.

31. What machinery have you put in that factory?

A. 83 machines.

32. Of whom did you buy these?

A. I bought them of different parties.

33. Give us the names of the firms who supplied the machinery.

A. Lawrence & Hammond. So many different machines in it was put that I cannot tell particularly. He have the biggest bill, you know; bought some of Fay & Co.

34. You bought some of Fay & Co.?

A. Yes, sir; the boilers made here.

570 35. Have you got a statement of what these machines cost you?

A. I believe not.

36. Do you know what they cost you, so that you can tell it with any degree of accuracy?

A. It is in the book.

37. But are you now able to state about what these machines cost you?

A. Not of my head, you know; have to be in the book and bills—all in the book.

38. Have you looked it over to see recently?

A. No.

39. Have you since your failure or before your failure within a year—have you counted up what the things cost you?

A. Yes, sir.

40. Did you keep any memoranda of what they cost you?

A. No.

41. When did you last make an estimate of what these machines cost you?

A. I figured it up, you know, sometimes in the winter time. I figure pretty nearly everything up when I was making that statement for Mr. Beidler, you know.

42. In 1885?

A. Yes.

43. Have you ever taken any inventory of your goods to ascertain your situation since 1880?

A. I believe not since 1880.

44. You never have gone over your assets and liabilities to see how you stand?

A. No.

45. Did you keep an account of the amounts of your labor bill?

A. Yes.

571 46. Did you keep an account of the lumber and nails that went to the factory?

A. Yes.

48. Where was that account kept?

A. The book-keeper keep it.

49. Aren't you mistaken about their keeping any account of the product of the factory?

A. What do you mean—all the lumber?

50. All the goods that was manufactured.

A. The lumber what goes into the factory I bought and measured it over and charged to the factory, you know.

51. The question is, Did you keep an account of what came out of the factory, made at the factory?

A. Yes.

52. Under what head was that kept in the book?

A. When a load was brought from the factory it was determined that there is so much on the load, and that was put down on a piece of wood—so many doors, so many blinds, so many sash, and so many mouldings—and that is brought to the office.

53. Did you ever look over or make any inquiry to see whether the factory was paying or not?

A. Yes. Sometimes it pays; sometimes was a loss.

54. Well, what accounts — did you examine the books to find out whether the factory was paying or not?

A. I made that difference, you know. I bought so much lumber in the factory, and when it was cut up and was made into sash and doors I figured the sash and doors to the lowest market price and see how much it is, you know.

55. Now, from what could you ascertain or find out the amount of goods made at the factory from the books?

572 A. The books—I never have the book for that, you know. When done I figure the sash and doors and I know whether it is plenty or loss.

56. Now, the factory account seems to stand indebted for all the lumber that went into the factory for the last several years, being nearly $250,000. There is no credit side to that account. Where and under what name did you keep track or account of the goods made at the factory?

A. Something what I don't know; all I know is what people got the sash and doors.

57. Your son was the only man you had on the road?

A. On the road; yes, sir.

58. The only salesman outside of yourself and Heesch?

A. Heesch was never on the road; was book-keeper.

59. He sold goods here, at Davenport?

A. Yes.

60. And your son and yourself and Heesch were the only salesmen?

A. My son and myself and Heesch were the only salesmen.

61. About what was your average sales at Davenport?

A. Something what I don't know.

62. Did you have much retail business here?

A. Not very much; a little business; yes, sir; sometimes a little more, sometimes a little less. Most of the business was a wholesale business.

63. Now, when did you buy or invest in this stone quarry?

A. You mean how many years?

64. When?

573 A. I believe it is pretty near 10, 11, 12 years. I don't know particularly, you know.

65. When was the last time that you quarried any stone there?

A. It is very hard to tell.

66. Six or eight years ago?

A. Yes; I believe eight years ago, maybe.

67. You rather abandoned that enterprise as a bad speculation?

A. Yes, sir; was not a good speculation.

68. Now, you had some barges when you went into the enterprise to transport stone?

A. Yes.

69. Some railroad tracks leading to the quarry?

A. The same tracks what is at the yard.

70. These railroad tracks were taken up and barges sold?

A. The railroad tracks taken up and laid at the factory.

71. I mean the track or tracks that went to the quarry have been taken up at the quarry.

A. Yes.

72. When were they taken up and when were the barges sold?

A. The barges were sold six years.

73. Six years ago?

A. Yes.

74. Since that time you have done absolutely nothing with the quarry, have you?

A. No.

75. When were the tracks taken up?

A. Two years; I believe so.

76. Two years ago or more?

A. Yes.

77. Have you made any efforts to sell that quarry in the last 6 or 8 years?

A. Yes; I have tried a couple of times to sell it.

574 78. You never got any offers?

A. Yes; sometimes; was not enough.

79. How much of an offer since 1880?

A. A couple of thousand dollars.

80. Who made you an offer of that much money?

A. A man from Muscatine. Mr. Griggs made me an offer.

81. How long ago?

A. Four, five years.

82. What was his offer?

A. He offered me a thousand dollars, you know. I tell him no; I won't do it.

83. These are the only two offers you have had in the last six years?

A. Yes; I believe so.

84. This railroad, was it a regular steam railroad track or a little narrow push-road?

A. 15 pounds to the yard.

85. Used for little tracks to haul stone by horse-power?

A. Yes; these tracks.

86. Is that the railroad that has been taken up and laid at the factory?

A. Yes.

87. About how long was that track?

A. That track, I don't know particularly how long; was not all used; some lying there, which Mr. Meyer sold.

88. How long was the whole business at the stone quarry?

A. That is something what I don't know. I believe pretty near a mile; maybe three-quarters; something what I don't know particularly.

89. Now, Mr. Ott, from the early part of Dec., 1885, up to May, 1886, were not doors as an article of merchandise constantly on the rise in price or value?

575 A. No; if you sell them at 60.55 delivered at the Mississippi river.

90. Did you take in Dec., 1885, and Jan., Feb., March, and April

following any publication giving the market value of sash, blinds, and doors?

A. I don't understand particularly.

91. Any magazine or paper showing market quotations?

A. Yes; we have all the time price-lists, you know.

92. Now, these price-lists gave the market price at Chicago, did it not?

A. We never can get here Chicago prices from Wisconsin, you know; Chicago always better prices than Oshkosh.

93. From Oshkosh and other Wisconsin points as well as Chicago?

A. Yes, sir.

94. Now, throughout the Northwest was not the price of doors on the rise from Dec., 1885, to May, 1886?

A. No; you have the book here and you see that we bought some doors in 1885, 70 off, from the Conlee Lumber Co., delivered in Davenport; not a few—a great many of them.

95. Well, now, in the spring of 1886 there were 65 & 5 off. This 70 off is better than 65 delivered. Didn't they sell in March and April, 1886, with as low a discount as 55 & 10?

A. Not here and not in Oshkosh.

96. What was the price here?

A. 65 & 60 and, where an extra good grade, 55 & 5, 55 & 10, according to the customer.

97. What was the total amount of orders taken by George Ott, Jr., in March, 1886?

576 A. That is very hard to tell.

98. About how much?

A. I don't know; I can't tell about.

99. What was about the amount of orders he took in April, 1886?

A. No; I can't tell.

100. What proportion of your total sales were made by George Ott, Jr.?

A. Pretty near all made, except what I sold myself, you know. I never sold something except in Chicago.

101. What proportion of your total sales were sold by your son? What share of the goods, the total amount of goods, you sold was sold by your son?

A. In 1885, you know, I sold fifty cars in Chicago, you know. When I have that fifty car my son was not on the road; was at home; not all shipped at once; shipped all along, you know; Barker & Henry. How much he sold is very hard to tell, for me.

102. Your attorney in making this assignment was Mr. Bills, was it?

A. Yes, sir.

103. When did you first consult Mr. Bills about your affairs?

A. The 26th of April, 1886.

104. That was the first time you talked with him about your condition?

A. Yes, sir; it was for me a pretty hard thing to talk over this matter, you know.

105. About what time in the day did you first see Mr. Bills about it?

A. I believe it was 9, 10, or 11; I can't tell. I was so excited I could not tell particularly what time.

577 106. He begun preparing papers that afternoon, did he?

A. I believe not for the reason I no make my mind up.

107. What time did you meet Mr. Bills at his office the next morning?

A. On the 27th?

108. Yes.

A. I believe very near eight o'clock; maybe it was a little sooner. I set there before he came—was not a great deal sooner.

109. You feel sure it was after eight o'clock in the morning?

A. Was not after. I don't think it was sooner.

110. You signed Exhibit "A" to Mr. White's deposition?

A. Yes.

111. Who wrote it?

A. Mr. Bills; and I signed my name to it.

112. Who was present when Mr. Bills prepared that paper and who signed it?

A. I don't know of somebody was present.

113. Do you recollect anybody being present except Mr. Bills and yourself?

A. I tell you if there is I don't know it.

114. Did you see the statement that was sent to the South Branch folks about the 29th of March, 1886?

A. The last statement?

115. The last statement.

A. Yes, sir.

116. Did you see it before it was sent?

A. Yes, sir; the clerk showed it me.

117. Did you see the valuation that was set down of the property?

A. What you mean, what it cost?

578 118. The valuation that was set down opposite the warehouse, the factory, goods on hand, etc.

A. Yes; I see now.

119. And you saw the small margin of $23,000 only as a surplus?

A. Yes, sir.

120. You were aware that your residence was exempt from forced sale?

A. Yes; I tried to sell it 3, 4 times.

121. Did you see this statement here "quarry estimated by Mr. Ott, $14,000?"

A. Yes.

122. Didn't you know at the time that that property could not be sold for more than $2,000?

Objected to as immaterial and incompetent.

A. I thought I give it what it cost me.

123. You knew it could not be sold for what it cost you?

A. Maybe not that time; maybe could be sold maybe to-day maybe in a year. I think it was worth so much.

124. Now, Mr. Ott, didn't you know that that stone had proved of so poor a quality and the expense of quarrying it so great that the quarry was substantially worth nothing?

A. I believe you are mistaken, Mr. Smith. I have from good authority—Mr. Flagler—that the stone is as good as Joliet stone, and from that time that railroad, from the time the C., R. I. & P. was built, $5 a car from the stone quarry to Davenport.

125. This road was built in 1881?

A. I believe it was after what that road was built to Muscatine they — stone out of that stone quarry—the railroad Co.—and paid me $1.50 a perch, and took them out themselves, you know; that is the reason I thought the stone quarry was some-
579 thing worth.

126. You had been trying to sell it?

A. When I get the price for it.

127. You tried to sell it after that?

A. Yes, sir; not after that, was not after that time; it was before that time.

128. Have you not tried to sell it since that R. I. road was built? When did you get the $1,000 offer?

A. Mr. Griggs bought a farm close to it. I liked to sell it before that time.

129. When did you get that thousand dollar offer?

A. He no made an offer. He thought——

130. When?

A. I can't tell particularly.

131. About when—before the R. I. road was built?

A. Yes, sir.

132. But you have taken up the tracks.

A. I need no track. When they put the switch in what need a track.

133. Have you operated it or taken out a perch of that stone since 1881?

A. No; plenty of business besides.

134. Did you make, in March, 1886, an inventory of your lumber, mouldings, stock in process of manufacture, etc.?

A. The stock, the mouldings, and lumber, yes, sir; what is in a few thousand feet, as good as we can take it, in the piles in the lumber yard.

135. It is mentioned here "lumber and mouldings and stock
580 in process of m'f't'r as estimated by Mr. Ott;" it was estimated by you in lot?

A. Count so many tiers, you know.

136. It was not measured?

A. It was not measured; no—that is, not yard measure.

137. Your factory, machinery, and grounds, you didn't make any calculation or computation of what it cost you, did you, in March?

A. I made it rough, you know. If you worked there 6, 8, 10 men it cost in the labor bill; sure it was what the factory cost.

138. Now, when you made the figures from which Heesch made his statement of the 23rd of Jan., 1885, from what did you get these figures?

A. From the books, you know.

139. Who assisted you in doing that?

A. I was not much in the books, you know. I know so much that I can find what I owe, you know.

140. How would you go to work in the books to find the amount you owe?

A. It was very plain; it was all open, you know.

141. How would you find it out—how would you go to work to find out what you owe?

A. Pretty near all what I owe Mr. Beidler himself he figured me out, you know, what I owe him on a piece of paper.

142. I'm asking the day you fixed up the figures for Heesch to send to the — Beidler in Jan., 1885?

A. I understand you particularly.

143. Now, from what did you get the accounts payable?

581 A. I got it I don't know whether it was the cash book or what for book. It was all open. I take them together, you know, and figure them together, and then I see it was, I believe, $36,000.

144. That is bills or drafts payable, that is $36,000, but the open account you owed for lumber and material?

A. That hadn't been put down, no open account; maybe one or two cars that was on the track. We sent for every car as soon as the car arrived, accepted the paper for it, and Bill Heesch put it in the books.

145. How came it that you gave to Mr. Heesch that you owed accounts payable, open accounts, to the extent of $10,522.48? Where did you get that?

A. That is something what I don't know. Was the whole thing together?

146. This statement of Jan. the 23rd shows that you were owing on open account $10,523.48; from what did you get these figures?

A. The book.

147. What book?

A. I don't know what you call the books, you know.

148. Did these figures of $10,522.48 appear any place in the book or were they the result of an addition made by you?

A. I don't understand particularly.

149. Can you tell how you got at the amount that you were owing on open account for which your creditors hold no acceptances or rather paper?

A. Yes; I believe there was some small bills, you know, small lumber bills, that I took them, you know. I cannot explain particularly, you know.

582 150. How did you find out the amount of the bills?

A. What was open, you know, I took.

151. What do you mean by what was open—what was not paid?

A. What was not closed off in the books, you know.

185. How long did it take to put on that upper story?

A. It took no long time.

186. Can you tell within a year when it was that you added it?

A. I can't tell particularly.

187. After the last story was put on the warehouse, did anything occur to increase its value?

A. That was for more room, the 3rd story.

188. Did anything occur or happen that made the warehouse worth any more after you had got it all built?

A. When a man put $3,000 in it it was worth $3,000 more for the man.

189. After you had done all that, did anything occur to increase its value?

A. I don't know for other people.

190. For you?

A. Yes; I must have it.

191. Did the property around the warehouse increase in price or value after you got it built?

586 A. I don't know; property in Davenport were all small prices, in all Davenport.

192. Property was going down rather than up?

A. Yes.

193. That was true of the factory property, wasn't it?

A. Yes.

194. Property was going down rather than up for the last two or three years before your failure?

A. Yes.

195. It was hard to sell?

A. Hard to sell.

196. Did anything occur to make the stone quarry worth any more in 1885 or 1886 than for two or three years before?

A. The stone quarry and factory are different property. I sold to Flagler twelve or fifteen hundred perches of stone; he paid a good price for it; it looks as though the people didn't know the stone.

197. When was it you made the sale of the stone to Flagler?

A. I believe 8, 9 years; something about that.

198. Now, did you think, or do you think, the quarry was worth any more in the spring of 1886 than it was in the spring of 1885?

A. Yes; I thought when I can sell a little stone it make me feel better. The Chicago road paid me some $300 for some stone when they built the road there; them Joliet men, I don't know what the men are, they made the contract for everything used on the whole road, delivered, for $.75, and then I was out $1.50.

587 199. Now, you didn't sell any stone out of that quarry between the first of Jan., 1884, and the time you failed, did you?

A. No. I believe Mr. Cook said it was 1881. I don't know what time the road was built.

200. Now, did anything occur to make you think the stone quarry was worth any more or had increased in value between the first of Jan., 1884, and the time you quit business?

A. Yes, sir; I believe the stone was every day a little more worth it was pretty near all out here in Davenport, and I believe the stone quarry is all right to-day.

201. You believe it is worth 14 or 15 thousand dollars?

A. I believe it is worth 14 or 15 thousand dollars. $25,000 was an offer for it, and we no sold it then for $25,000; for what reason I no believe to-day it is worth $14,000.

202. Do you think it would sell to-day for $500?

A. I have no money but I get on the homestead, and you know I think it is all right to-day.

203. Do you believe it would sell for $500?

A. That is something what I no know. I haven't sold any stone out of that quarry for three years before I quit business. I like no to give it away for nothing for five years.

204. The last time was when the road was built—some time in 1881, as you recollect, was it not?

A. The last time was in 1881, as I recollect.

205. What did you consider it was worth in 1884?

A. The stone quarry?

206. Yes.

588 A. I hold it all the time the same price what I tell you there. I think it is good property.

207. What did you hold it worth in 1884 and 1885?

A. I don't know what I hold it that time particularly.

208. Can you tell within a thousand or two?

A. $14,000; maybe $13,000.

209. You make up these figures for the statement of Jan. 23rd, 1885?

A. Maybe.

210. You put the quarry down, then, as $11,000, didn't you?

A. Maybe. I don't know particularly.

211. How long trips did your son usually take?

A. To the Missouri river?

212. I mean, how long was he gone?

A. 4 weeks, 5 weeks, 6 weeks, 3 weeks, 7 weeks; sometimes 14 days gone to Omaha and Des Moines; sometimes comes home on Sunday; Monday out again.

213. How long was he gone—how many days or weeks—on his last trip?

A. Something what I can't tell you, you know.

214. Now, you say that you made the figures for the statement of Jan. 23rd, 1885, because you didn't want Heesch to know what Mr. Beidler had said to you?

A. Yes.

215. Why didn't you want him to know what Beidler had said to you?

A. I and Beidler was good friends together, and of course I didn't tell my book-keeper everything.

216. He knew all about your financial affairs?

A. Everything.

589 217. He kept account of everything you owed and what was owed to you?

A. Yes.

218. He knew better what you were worth than you did?

A. Maybe.

219. That is the only time you ever did such a thing as to make up the figures for the book-keeper?

A. I believe so.

220. You made up these figures within less than an hour, or while he was gone to dinner?

A. I tell you, I was making them up from Jan. the 8th to the 21st or 22nd, all the time in the middle. When he is gone to dinner I figure that together, do you understand what I mean?

221. Yes, sir; you were figuring on the books every noon from Jan. the 8th up to the time you had the statement sent them.

A. Yes, sir; handed the figures to him and told him to send him.

222. And nobody else helped you?

A. No, sir; nobody in the house.

223. Your book-keeper didn't know of your working on the books?

A. I believe not.

224. Until the last day?

A. Maybe.

225. Now, if you don't want your book-keeper to know about these figures you were sending to Beidler, why did you give your statement to him to copy and send?

A. Was not particular that he should know it. I like no to tell him what Beidler told me, you know.

226. You could have asked Heesch for the amount of bills payable without telling what Beidler told you?

A. I staid there from 12 o'clock. I did it myself.

590 227. You could have asked Heesch for the amount of accounts payable without telling him what Beidler had told you?

A. Sometimes a man like to see himself; every morning at 12 o'clock in the factory.

228. Didn't you go to dinner at 12 o'clock?

A. No; at one, when he was through.

229. That was unusual, wasn't it?

A. No. All the time the same; always staid there while he was away; all the time; every five cents can save; nobody in the house.

230. I understand that you took from the books the amounts that you owed, bills payable and accounts payable?

A. Yes.

231. And that you did it yourself because you didn't want to tell Heesch what Beidler had told you?

A. Not alone that. I like to do it myself; that I understand a little.

232. Didn't you know that the book-keeper had made up a statement in December before that to show how you stood? Don't you — that the book-keeper had figured up to see how you stood in December, 1884, just a month before you made these figures?

A. A month before? A year before.

233. You made up this statement from the 8th to the 23rd of Jan'y in the previous month of December, 1884. Didn't you know that you and he had figured it up?

Objected to as assuming something not shown by the testimony.

A. That is something what I don't know, that he made a statement afterwards.

591 234. Didn't make up a statement of the liabilities and resources about a month before this statement?

A. I believe not a month before.

235. Now, I don't wish to be impudent and go over the same grounds, but I would like to have you tell us how you found out the amount that you owed for bills payable for acceptances and notes and the amount that you owed on open account to give to Mr. Heesch to copy and send to the South Branch Lumber Co.?

A. I cannot tell you that better. I took the acceptance book and see how much was in it, you know; see what all was on the one side, you know; then I took the books, you know, not in the acceptance and figured them together, and that is exactly what I put in the paper. I can no explain it better.

236. You didn't take the acceptance book, then, and take out the drafts and notes one by one, one note to such a man for so much and another to such a man for so much, put one column down and figure it together, and for what was open in the books take another sheet of paper and put down the small bills, $300 for one car, $200 for this, $300 for that, and figure them together?

A. That was exactly what I tried to do; that was exactly what I can tell you.

237. You saw he had figured a balance of $92,955.28, did you not?

A. Yes.

238. Now, that was taken from figures that you handed him, was it not?

A. Yes.

592 239. Now, do -- remember having Heesch send to the South Branch Lumber Co. a statement long before Jan'y, 1884?

—. I thought all the statements what I had was two statements, you know.

240. Isn't that Mr. Heesch's handwriting?

A. Yes, sir.

241. And on your letter-head and on your bill-head?

A. Yes.

242. Don't you know about that statement being sent in that letter in 1884?

A. I know that two statements were sent, but didn't know about three.

243. You didn't remember about what?

A. No; I didn't remember about that.

244. Do — know where Mr. Heesch got the figures for the value of the stone-quarry farm, factory, machinery, grounds, etc., on this

statement dated Jan'y the 5th, 1884, which the notary will mark for identification Exhibit "B" to Mr. Ott's deposition?

A. I don't know where he got the figures. We talked the matter sometimes over; maybe he got the figures; I don't know; talked sometimes over what it is worth.

245. Now, Mr. Ott, was your warehouse, your factory, or your stone quarry worth any more in 1886 than it was in 1884?

A. The warehouse was; I put a couple elevators in; and the factory every day more worth. When you put in the last month $10,000 in it, I believe, if a machine would cost $1,800, is the factory not $1,600 more worth?

246. What about the stone quarry?

A. The stone quarry—I think the stone quarry will be more
593 worth than I figure it to-day.

247. Now, Mr. Ott, is it not customary in estimating machinery in factories where much machinery is employed to deduct from the value of the machines 10 to 20 — per year for wear and tear?

A. Not in the first five years, when everything is new.

248. Well, after the first five years, isn't it customary to deduct from 10 to 20 — per annum for the depreciation in value of the machinery?

A. A little too much, 20.

249. Now, will your books show where this $10,000 of machinery was bought and to whom the money was paid?

A. Yes; it will not show maybe the $10,000; maybe it show $8,000 or $9,000, and some labor in it, you know; that was labor and machinery together. When you buy a machine you have to put the machine up, and it cost some labor. Yes, the books show every cent, every dollar.

250. Do you know whether or not any of the stock was taken from these four or five cars of glass after their arrival at Davenport?

A. I know nothing at all about that business. Mr. Heesch would know about that; there may have been more or less.

251. He didn't state to you that the four car-loads were put into five cars?

A. That is something what I know nothing about.

252. Did the South Branch Lumber folks send you any lumber after Mr. Beidler came out here?

A. I believe four or five cars.

594 253. He was here in April, was he not?

A. I believe there was four or five cars what I bought before.

254. You don't know positively?

A. I don't know particularly.

255. When Mr. Beidler was here you had a long talk with *me*?

A. Yes.

256. Two or three times?

A. Yes.

257. Where did you talk with him?

A. Outside of the lumber yard.

258. Where else?

A. Schriker and Mueller's lumber yard.

259. Where else?

A. That is where we staid pretty nearly a half a day; that is the reason I have to attend to the business. He no tell me much. I told him when he like to have the books he could go to my house; keep the books no open in the office; somebody come in; make a bad impression; excuse me; have to go to the factory.

260. Did he call to your attention your condition, as to whether you would pull through or not?

A. I say, Beidler, I pull through; and when these strikers no come, Mr. Smith, I pull through; make no difference how much I owe.

261. What did Mr. Beidler say to you?

A. What he say to me?

262. Yes.

A. No much. I call Beidler a friend, you know, a good friend; give me credit; only I no feel first rate, that I owe so much, was the reason I wanted to make it less; but Mr. Beidler wanted

595 no to make it less; treated me all right.

263. At this interview in April Beidler didn't want you to reduce the amount you owed him?

A. So much; when he tell me $36,000 I better buy from other places to make it less; no better buy lumber of me.

264. Did he say that when he was here in April, 1886?

A. No, when he was here, but when he was in Chicago.

265. What was said when he was here in April, 1886—the 10th of April—when he brought with him the statement of March 29th, 1886, and looked at the books?

A. Asked me for the judgment note.

266. And you refused to give it?

A. I tell him I owe the child an' Charley Hill. Mr. Beidler, I no do that kind of business.

267. Did he say anything about the amount of money you were owing and your liability to get through when he was here?

A. Yes.

268. Did he say anything about the difficulties of carrying so much debt as you had on hands?

A. That's the reason I owe Mr. Beidler all the time so much.

269. Didn't he then tell you that he thought it doubtful whether you could pull through?

A. When you pull through you can do more as other people, Mr. Beidler; I pull through.

270. When? On the 10th or 12th of April, 1886?

A. Yes.

271. Now you say you stayed round the lumber yard and talked to Mr. Beidler about half a day?

A. Yes.

596 272. Can you tell us all you said?

A. Yes; over business; five or six cars to ship; hurry up them cars; I hurry them up, when I tell Mr. Beidler I do the best I can.

273. Was your son on the road at that time?

A. I believe my son came in in the morning.

274. Did he go out again at the time of the failure?

A. I know when I paid $500 on the warehouse that will come so quick, I tell Mr. Beidler I pull through; $60,000 stock in the house; came in while Mr. Beidler was here and went out again. My son was here at that time and went out again. Mr. Beidler ask me along for dinner.

275. How long was your son George gone on his last trip?

A. I don't know particularly.

276. When did he come home before the failure?

A. A couple of days; Saturday before. I cannot tell you the day.

277. Did you have any talk with Beidler during the last interview, on or about the 12th of April, 1886, as to keeping up his credit with you?

A. Beidler keep up my credit; give me the same credit. I no ask him; tell him it was enough. That is the reason the last time there I bought some lumber from some other people. It was, I believe, on the 28th of March or the first of April, that time when I bought some lumber from other people. It is enough; I owe you enough.

278. When was that?

A. In 1886, in March.

597 279. Did you go to Chicago after April the 12th, Mr. Beidler was here?

A. No, sir.

280. Did you have any talk with Mr. Beidler on April the 12th or the last time he was here before your failure about his continuing to sell you lumber on credit?

A. He never told me a word.

281. Did you have any talk about that subject?

A. No.

282. When did you find out what the bank here had told Mr. Heesch about declining to accept your drafts or cash them?

A. The bank didn't think that on the last day I had drafts accepted to the amount of $4,000; not accepted; the bank took them.

283. You got $4,000 in cash the 26th of April, 1886, of the bank upon the drafts that you drew?

A. Yes, sir.

284. Did you get cash for the drafts that you drew?

A. I no drew any; Heesch gone out and get it and pay off to workmen and pay off bills.

285. You got the credit and Heesch drew the money and paid off bills; the same thing?

A. The same thing.

286. Did you ever know before you failed that the bank had told Heesch that they could not cash your drafts as they had heretofore done?

A. To Heesch like to see me, and Mr. Fidlar tell me—George—we could not make it so much more; brought $25,000 every month to the bank.

287. That was told you, then?

A. Yes.

288. How long before you made your assignment?

A. One or two days before.

289. They said they would take what paper you had, but
598 they could not carry you for so much as they had done before?

A. No tell that. He had pretty near sixty—seventy thousand paper; maybe fifty thousand, to be particular. He like no to have fifty thousand more—no so much more again. What the reason? There was here a paper that was paid; there a paper would come back.

290. Now, didn't Mr. Fidlar tell you that he — unwilling to cash your drafts until they had been accepted by the drawee?

A. He no tell that me, you know.

291. Now, didn't Mr. Heesch tell you that Mr. Fidlar had told him that he didn't want to cash the drafts until they had been accepted by the drawee?

A. Yes, sir.

292. When was that?

A. A couple of days, that was—a short time before—when I gone to the bank myself, and I talked to Fidlar, and he says, "George, we have so much paper—we have $11,000—that is not accepted. We cannot do that more or make it larger every day."

293. And that was, as you recollect, the Friday or Saturday before you made the assignment?

A. It was. I believe it was Saturday, you know. I can't tell it sure if it was Saturday or Friday.

294. Now, the action of the bank didn't have anything to do with your assignment?

A. No.

295. Nor did the action of Mr. Beidler have anything to do with your assignment?

A. No; sure. When he was here, you know, I tell him—Mr. Beidler—I paid the notes all the time; paid half and renewed half just the same. There was no man pushing me, you know.

599 296. Now, Mr. Ott, when was it that Mr. Heesch took charge of your books at the warehouse or took charge of your books?

A. He always attend to the warehouse.

297. About when did he take charge of the books? About when he went into the book-keeper's business for you is what I want to know.

A. I believe it was 9 or 10 years.

298. Well, now, for the last four or five years he — almost entire charge of writing your letters and making statements and keeping the books—everything?

A. Yes, sir.

299. He consulted you about the business every day, didn't he?

A. Yes; little, you know.

300. You consulted him and instructed him?

A. Yes.

301. You knew that he was keeping copies of his letters that he was writing?

A. That is what I thought; he press them all off in the books. I leave a great deal to him, you know.

302. The drafts that were drawn, Mr. Ott, were signed by you personally, were they not?

A. Yes, sir.

303. He didn't have the authority to sign drafts or notes or make acceptances?

A. No; except when I was gone to Chicago. When he have something to pay I sign them and make them to his order, you know, for the week, two, three, or four days; I not here. He have to put the name on the back of it what he have to pay in the week; I was no here.

600 304. You give him a check to his order. Now, you give a draft on the 26th of April, 1886, to Christ. Mueller, did you not?

A. No; a draft; two acceptances; three acceptances.

305. You drew a draft on these parties and gave it to him, and he sent it off and got it accepted. It was not accepted by the drawee when you gave it to him?

A. No.

306. You gave him what you call an acceptance on somebody. Do you remember who it was and the amount?

A. I know one, you know; Mr. Moetzel.

307. You know you gave a draft on the 26th day of April to Christ. Mueller, what you call an acceptance on somebody. Do you remember who it was and the amount? Now, did you have any talk with Mr. Christ. Mueller on the 26th of April?

A. No.

308. Did you give any drafts to him?

A. No.

309. You sent drafts to his order?

A. Yes.

310. Did you cause or request Mr. Heesch to make those drafts?

A. Yes; Mr. Mueller was there and he told me, you know, he had built the new mill; was short in money; can I help him a little. I say I do the best what I could.

311. And you gave him drafts on Moetzel, dated March the 23rd and one April the 23rd, and on Howell & Jewett April 24th, $1,260.80?

A. Yes.

312. Now, what was the understanding about these—what these were taken for?

A. Mr. Heesch knows that better than I do.

313. Didn't you have a talk with Christ. Mueller about that time?

A. No; didn't have no talk about it at all; simply tell Mr.

601 Heesch to make up these drafts on these two accounts, Moetzel and Howell & Jewett, and give it to Mr. Mueller on what I owed him.

314. On the first day before you failed?

A. Yes, sir.

315. Was that done in the morning or in the afternoon?

A. I believe in the morning; don't know particularly.

316. Mr. Heesch fixed it and Mr. Heesch did the talking with Mr. Mueller about it?

A. Yes.

317. And you did no talking with this Christ. Mueller about it at all?

A. Not at all.

318. Mr. Heesch suggested that you do it and you did it?

A. I told him to look in the books and see if he could do something for him, and Heesch tell me he can make the three drafts, and I tell him make them out.

319. And you know when you made these drafts that something had got to be done about these affairs?

A. Something done.

320. And you know you had got to stop payment?

A. Yes; something have to be done as soon as nothing can be sold—have to be something done.

321. Now, did you have a talk with McClelland & Co. on the 26th of April about the draft on Edwards & McCullough Lumber Co.?

A. No have a talk on the 26th; was ten, twenty times before that he wants his money; that is the reason I drew that draft—that acceptance.

322. You directed Mr. Heesch to make the draft and you signed it?

A. Yes.

323. Did you give it to him or tell Heesch to?

602 A. I give it to him.

324. What did Mr. McClelland say to you or you to him?

A. Nothing; here's a draft for that wire you bought for me.

325. Did you see the entry made on the day book of this draft that was given to McClelland & Co.?

A. I seen it; that is all what I see it.

326. The draft, you mean, or the memoranda made on the book—you never read that?

A. Never read it. I was the poorest man in the house. When it was Monday and everybody got some money I got two dollars, and that was the whole thing what I was.

Adjourned until April 8th, 1887, 9 o'clock a. m.

327. Mr. Ott, who had access to the cash drawer?

A. Mr. Heesch and I.

328. Did you assist in making up the deposits?

A. No; Mr. Heesch.

329. Do you know whether there was any book account kept of the small retail sales?

A. I do not know.

330. You are accustomed to take money whenever you have need of it?

A. I tell him what I take when I need something.

331. You don't know whether there was a balance taken daily of the cash or not, do you?

A. No; I no take the money daily, you know.

332. Do you know whether he footed up to see whether he was short or over in his cash every day?

603 A. No; I believe not every day; maybe yes, maybe not.

333. Now, are you not aware, Mr. Ott, that the cash received from sales in the store here was not put down in any book?

A. I believe was put down, maybe; that is something I don't know; the boy was with me 15 years. I leave it to him; was nothing doing in the store; thought he was honest, and I believe he was honest.

334. I do not mean to reflect on Mr. Heesch or you. I want to know the course of the business, whether or not they had kept an account of the sales that were made in the warehouse.

A. I believe so.

334*a*. But you don't know?

A. I believe he kept an account; I don't know.

335. Now, your son was your only salesman on the road?

A. Yes.

336. He was here at Davenport when Mr. Beidler was here, about the 12th of April?

A. Yes; he was here.

337. He went out upon the road again?

A. Yes.

338. When did he return?

A. I can't tell you particularly when he came back.

339. Friday or Saturday before the failure?

A. A few days before the failure.

340. He was here on Sunday before the failure that you know of?

A. I no see him in the house; all what I see on Monday; all that he came around Monday morning.

341. How did he come to return so quick; did you send for him?

A. I sent for him; thought it was no use spending money; there was nothing to sell.

604 342. Did you copy the letter you sent for him?

A. Mr. Heesch wrote the letter.

343. Do you know whether he kept a copy of the letter or not?

A. I do not.

344. Do you know to what point the letter was addressed?

A. I believe to Atchison.

345. Do — know where the orders were kept or how they were kept that were received for goods?

A. Mr. Heesch has a letter drawer that I have no key; he have the key.

346. You don't know whether these in my hand—these 46 orders—are the orders received in 1885 and 1886 or not?

A. Something what I do not know.

347. Now, I understand you to say yesterday that your son took no orders for goods on his last trip.

A. No.

348. How did you know that if you didn't keep the run of the orders received?

A. He wrote a letter; he says, Father, nothing to sell, and when you give it away half for nothing.

349. Where is that letter?

A. I don't know; I never keep it. Heesch keep that all the time.

350. Now, in the month of March, didn't he make very large sales?

A. In the month of March?

351. Yes.

A. I believe not. This trip that was taken was the trip from the Mississippi, from Davenport to La.; that was a better trade; get more on the Mississippi than on the Missouri.

352. Will you look at these two orders and please state
605 whether or not your son took them orders on his last trip out?

A. These; that is on the C., R. I. & P. road; that is what I don't call the river road, you know; sure that is very small; don't call it a big order, you know.

The examiner will please identify these as present, marked Exhibits "C (1)" and "C (2)."

A. This order here on Moetzel, a very small order; that is what we call a very small order.

353. Now, Mr. Ott, don't you know from your own recollection that your orders for the month of March, 1886, were unusually large?

A. No; was no large.

354. And unusually numerous?

A. No; was not large; ship 11 cars a week, or 8 was no large; for what we had all the time before pretty light.

355. Will you look at the 14 documents which I hand you and state if these are not orders that were received in the month of March, 1886?

A. There was some there was taken in March, you know; have no ship quite all, you know.

356. I seem to have included by mistake four of different months. Will you now look at the ten papers or orders handed you and state if they are not orders for goods received by your concern in March, 1886?

A. Yes; these are sold in March for later delivery.

357. The orders speak for themselves as to whom the drawer wanted the shipments, do they not?

A. Yes; when he send the sizes; first we have to wait for the sizes; when a man buy a car he send the sizes in them; we have to make the sizes, and then we can fill them; when you
606 know what the sizes was have something to do; when no have the sizes have nothing to do.

358. Now, Mr. Ott, is there any other month during the year

1885 or 1886 when you received as many and as large orders as are shown by these ten orders before you?

A. Oh, yes.

359. Will you tell us what month it was?

A. I cannot tell particular month; I was in Chicago; in 24 hours 50 cars.

360. When was that, and to whom?

A. That was to Henry and others, to Barker & Co.; I believe Halleck & Howard, in Denver.

361. When was it?

A. I believe it was in 1884; 1883 or 1884.

362. Now, do you know of your own knowledge, Mr. Ott, what your average sales were per month by the car-load, not in dollars and cents?

A. One month was larger and one month was a little no so large.

363. Do you know what the average shipment—the average number of cars shipped by you during the year 1885, for instance, was?

A. No; I do not know that.

364. And you cannot tell whether the orders produced here by Mr. Heesh are all the orders taken in in 1885 and 1886 or not, can you?

A. No.

365. All you know about it is your general recollection of the way the thing ran?

A. The thing ran; yes, sir.

366. You have got no memoranda or books to which you can go to find out?

A. No.

607 367. I will ask you, Mr. Ott, if you didn't take up the railroad or rails at the quarry and bring them up here when you bought and fitted up your factory?

A. No; I brought them; the railroad lie there, I believe, two years.

368. Afterwards?

A. Now two years; we put them down more than two years; there is one year was not working; I believe put the railroad there 1 & ½ years before I stopped; I call 1886 one year; was April, you know.

369. Now, don't you recollect that when you built over the buildings now your factory and got ready to do manufacturing business that you brought up that railroad to the factory ground, where it now stands or lies?

A. No; we have two old horses, and I do it with the wagons and the horses, you know, the first.

Redirect examination by Mr. BILLS:

Redirect interrogatory 1. How much were you ever offered for the stone quarry?

A. When we started the first time, $25,000.

2. When was that, do you think?

A. A man from Joliet; I believe the man's name was Snyder.

3. Who was Flagler, to whom you said you sold 200 perches of that stone?

A. From the Island here.

4. Col. of the Rock Island arsenal?

A. Yes.

5. What did he do with the stone?

A. Used them on the Island there.

6. Did he come down to the quarry and inspect the
608 quarry?

A. Tell us good pressure; he was a good stone.

7. Did he test it?

A. He tested it; yes.

8. Is that a good stone there, as far as you know?

A. My foreman, Mr. Lindsay, tell us it was a good stone delivered to that bridge here; what you call 4 x 4, I believe; what you call Milan; sure it paid us $6.50 for the perch.

9. Did you sell some afterwards for the Rock Island road to build culverts of?

A. No for culverts; for bridges, for piers.

10. Was stone sandstone?

A. Sandstone and limestone.

11. Is there plenty of — in the quarry?

A. Plenty; 70 feet high on one side.

12. How far is the quarry from the main line of the Rock Island road from here to Muscatine?

A. Pretty nigh to it there, through the quarry.

13. What did you ask for it at the time this man offered $25,000 for it?

A. Mr. Ochs, you know; I was a partner, you know; they want $50,000.

14. The Ochs were in with you?

A. Two Ochs and I; sure I tell them better sell it; want fifty thousand; was crazy on the stone quarry; Mrs. Shricker was to put a railroad in to bring its sale up.

15. Did Mr. Schricker lend you the money to put into it?

A. Cash, $5,000; gave it to Louis Ochs, treasurer, and afterwards paid $3,000 there, $2,400 on that bank here—Citizens' Bank.

609 16. I call your attention to your cross-examination in regard to the manner in which you arrived at the amount of your bills payable for that statement to the South Branch Lumber Co. of Jan'y 23rd, 1885, and ask you to state how you arrived at the amount of your bills payable there? How did you do it; did you foot it up on the books or on a separate piece of paper?

A. Separate piece of paper; added all up what was there; South Branch, leave them out; added on a piece of paper accounts together.

17. Did you put down the South Branch Lumber Co. with the others?

A. Leave them out; was $36,000, and when I tell him I send what I owe I put them on it Mr. Beidler tell me he want what I owe other people, not what I owe him.

18. Addie Kloppenburg has other property, has she, besides th amount that you owe her?

A. Yes; other property.

19. What has she?

A. A little farm.

20. Have you received the income of that?

A. Every year $200, and paid the taxes and other little thing what was made.

21. Has she worked in the family there—helped your wife sinc she has been big enough?

A. Yes; to-day and all the time.

22. She has been a member of the family?

A. Yes; she has been a member of the family. It cost no large - to raise her. My wife fix her the dresses over, and she cost no muc to raise.

23. In what condition was the machinery in your factory at th time you quit business there?

610 A. All in number-one condition; all new machinery.

24. Do the books show what was paid for all that ma chinery?

A. I believe so; for the machinery the book show the setting u was all done by day labor; by the day, you know.

25. How did you come to pay $500 on that mortgage on the ware house at that time? You say you paid it just before the failure.

A. It was due, you know, and I like to renew it, and Mr. Fick tell me if I pay $500 in April and $500 in June he leave it the sam 7 per cent. or 6 and a half per cent.; he leave it the same when pay that on it, you know. I give him—he was with me in Feb'y o March—I give him a check payable the 20th of April; give hin that a month before. He give me a receipt for it; tell me he re new that $4,000. I paid him $500; it was 3,500.

26. You paid the $500 in order to get it renewed, just as it was

A. Yes.

27. Had you any idea of making an assignment at the time you paid that $500?

A. No, Mr. Bills.

28. How much did you owe Chris. Mueller at the time you paid the draft on the 26th of April, 1886?

A. I believe I owe him pretty near nine thousand dollars.

29. Pretty near nine thousand dollars? Did he have any security for any of it?

A. No.

30. Did you say that he had been crowding you to pay him some thing?

A. He was building a new mill. He on me hundred times ge mad. When he gets mad I say I do the best I can; tell Heesc make him out something. He was there everymorning.

611 31. You owe him all the rest of it yet?

A. Yes; $7,200, I believe.

32. Can you tell what this dry kiln cost you that you hav spoken of?

A. Yes.

33. Well, tell us.

A. The patent what I bought—I don't know what you call it. The fan and the condenser I paid $450 for; the Steam Heating Co. $500 for it; here in town, Steam Heating Co.; bill was to Charles Mueller, $450. Roofing, I believe, was $150 or $160; somewheres in the neighborhood; and our floor we made ourselves in the factory—20,000 feet of flooring in it. The carpenter bill was $200. Now, I keep no account of nails and them things. There was a little engine in it that was before in the factory that we move in the kiln; cost $400.

34. What was that for, to work the fans?

A. To work the fans. Some other little things what I can't remember, you know.

35. How much would these two bills of Moetzel's and Hampton's, that were taken in April, 1886, amount to?

A. Pretty near a hundred windows; amount to $100; maybe not a hundred; maybe 96. I believe this bill was never shipped; the men weren't any worth; the Hampton bill was never shipped. I believe that it amount to maybe half a car; amounts to maybe $300 or $250.

36. Hampton was not good for anything?

A. Some bills I tell Bill we will no ship.

37. You think it is that bill?

612 A. I believe so. Small bills more trouble, you know.

That is all.

Recross-examination by Mr. SMITH:

Recross-interrogatory 1. When was the $25,000 offered for the stone quarry?

A. Right in the beginning.

2. When?

A. I don't know particularly what time we began; it was in the first year when I made the stone quarry open. It was, maybe, in the first year, you know.

3. The lease was made in 1877; can you tell when it was from that that you were offered $25,000?

A. Maybe year or six months; along some time in 1878 or 1879. It was not offered me; it was offered Joseph Ochs, you know; he tell me.

4. Now, Mueller held a claim against you personally, and also one for Schricker & Mueller?

A. Yes.

5. Now, how did these drafts apply, as you understand it, on this debt—on the debt to him personally or on the debt — Schricker & Mueller?

A. I believe he told me, you know. What I sold him, I believe, it was some open account. There was a balance on a couple of notes, and make that straight first, and then I leave that on the notes.

6. The notes were on Schricker & Mueller and the account personally?

A. That $1,200, I believe, was not all personal affairs. I
613 don't know particularly. Do you mean personal what I bought alone?

7. Yes.

Orders marked "D (1)" to "D (10)."

That is all.

GEORGE OTT.

STATE OF IOWA, } ss:
Scott County, }

Subscribed and sworn to by the said George Ott on the 19th day of April, 1887, before me, Flora Haddix, a notary public in and for Scott county, Iowa.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] FLORA HADDIX.

April 8th, 1887—p. m.

Mr. GEORGE OTT, Sr., a witness on part of defendants, recalled, and in answer to interrogatories propounded to him by counsel for defendants testifies as follows:

By Mr. BILLS:

Interrogatory 1. Mr. Ott, did you make an arrangement with McClelland Bros. for this wire?

A. Yes.

2. What was the arrangement? When, Jan. 20th 1886?

A. Yes.

3. What was the contract?

A. The contract was, you know, that he buy the wire for me; he told me he needed some wire. I tell him, buy it a little cheaper; he can put my order in his order.

4. Who did you tell that?

A. Mr. McClelland.

614 5. Which one?

A. Mr. George McClelland.

6. What did he say?

A. All right.

7. He did it?

A. He did it.

8. When were you to pay for the wire? Was there any agreement about it when you were to pay for it?

A. George came up three, four times; wanted the money, you know, for that wire that was delivered on the 19th of Feb. I told him I bring it down.

9. Where did he come?

A. Couple times on the street; last time in the office.

10. How long before the assignment was he in the office?
A. Two days before; maybe three days.
11. Was Heesch there?
A. I believe he was there.
12. He brought a statement in, told you it was due, and asked you to pay for it?

Object to his stating anything as to a paper; if there was a paper brought it will show whether it was a statement.

13. Did George McClelland state at that time whether or not he had paid Blair & Co. for that wire?
A. He told me he wanted to pay, and I should help him out and give him a check for that what I have. I told him I would bring it over.
14. Was that the reason you gave him the Edwards draft?
A. That was the reason.
15. Who did you find there?
A. Mr. McClelland in the office.
615 16. Thomas?
A. Yes.
17. You may tell what was said.
A. I say nothing. I give him the check and told him to give me credit for it.
18. Did you tell him that you were in trouble and didn't propose to go back on your friends, or anything to that effect?
A. Not a word. I only staid five minutes there.
19. Did you tell him that the South Branch Lumber Co. was crowding you, or anything to that effect?
A. No, sir. Was that bill that was in there, was that the year before or was that last year?

(The bill identified as being due June, 1886, sent to Ott on the 19th of Feb. and entered in his books.)

That is all, I believe; that is all.

GEORGE OTT.

STATE OF IOWA, } ss:
Scott Co., }

Subscribed and sworn to by the said George Ott on the 19th day of April, 1887, before me, Flora Haddix, a notary public in and for Scott county, Iowa.

Witness my hand and notarial seal, affixed the day and year last above written.

[SEAL] FLORA HADDIX.

616 In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division.

THE SOUTH BRANCH LUMBER CO.
vs.
GEORGE OTT, SR., *et al.*

Messrs. Cook & Dodge, Smith & Helmer, and A. J. Hirschl appear for the South Branch Lumber Co.

Messrs. Bills & Block appear for George Ott, Sr., and J. B. Meyer, substituted assignee.

Mr. Ernst Claussen appears for Charles Hill.

Mr. Bleik Peters appears for Addie Kloppenburg.

Testimony on Part of Defendants.

DAVENPORT, IOWA, *June 4th, a. m.*, 1887.

Mr. GEORGE OTT, Sr., recalled by defendants in rebuttal.

By Mr. BILLS:

Interrogatory 1. You heard Mr. Beidler's testimony yesterday, didn't you Mr. Ott?

A. Yes.

2. I call your attention to the statement he made to the effect that you told him after the assignment that Mr. White, the agent for the Milwaukee railway, came to you on the morning of the as-
617 signment and told you that he would be personally the loser of the claim which the Milwaukee road had against you for freight, and that you told him to take the cars of glass which they had on their track and get them out of the way, or something to that effect. Did you tell Mr. Beidler anything of that kind, in form or substance?

A. I no told him so, for the reason I sent Mr. White the paper the day before. I can't tell anything when I sent the paper before.

3. On the morning of the assignment?

A. The day before. I mailed it the night.

4. I think you are mistaken—the day of the assignment.

A. He get it that morning.

5. It was made that morning in my office?

A. Yes, sir.

6. It was the day before you said you saw Beidler. Did you see Mr. White at all on the day of the assignment?

A. No; I no see him. I was so busy and running so much around I didn't see anybody.

7. Did you make any promise or agreement with Mr. Beidler that you would let him know in time, that he might secure himself if you had any trouble about your payments?

A. No.

8. How many times did Mr. Beidler come to see you after the assignment was made?

A. I believe, four or five times.
9. Four or five times?
A. Yes, sir.
10. Do you recollect of his being here just before the three
618 months expired for filing claims against the estate?
A. I believe ten, eleven, or nine days before he promised me at that time he like to come in.
11. Under the assignment?
A. Yes.
12. Where was the interview at that time?
A. He was in my house, and my son was there, and I and my son and Beidler went to the Turner Hall. He gone away at that time, at eleven o'clock, or pretty near that time; my son brought him up to the depot.
13. Did Mr. Beidler say anything to you at that time about your helping him in a suit of his?
A. Not that time.
14. When was it?
A. The first time. This was pretty near three months afterwards.

Plaintiff objects to any questions as to conversations with Mr. Beidler and declarations of his, he not being a party to the suit.

13. When was it that he asked you to assist him in his prosecution of this case—this suit against the assignee?

Objected to as immaterial and irrelevant and not rebutting evidence.

A. I believe it was in May.
16. What did he say to you?

Objected to for the same reason as the last preceding interrogatories.

A. He told me he would pay me if I can help him beat that case, you know. I told him no.
619 17. Did he mention any amount?

Objected to for the same reason as the last preceding interrogatories.

A. Yes; he told me ten thousand, fifteen thousand, dollars was better than nothing.
18. He told you that it was better that you have ten or fifteen thousand dollars than nothing?
A. Yes.

Objected to as immaterial and irrelevant and not rebutting evidence.

19. You heard the testimony of Mr. Gartside yesterday, did you not, Mr. Ott?
A. Yes.
20. I ask you whether or not at the time you gave Mr. T. W. McClelland the draft at his office on the day before the assignment, whether you saw anything of Mr. George P. McClelland there?

A. No; I see nobody there. Mr. McClelland was in the front office and I gave him the acceptances, and I gone out again; staid not here more than five minutes.

21. Was Mr. George P. McClelland there?

A. He told me he was not home—was out of town.

22. Did you notice whether the door was open in the back room?

A. I can't tell.

23. Did you go near the door that leads into the back room?

A. No; we was right on the outside of the table.

24. You gave the acceptances to Mr. T. W. McClelland?

A. Yes.

620 25. And told him to give you credit for it?

A. That is what I told him.

26. Did you say anything else about business affairs?

A. Not a word.

27. Do you recollect how loud a tone of voice you spoke to him in? In a loud or in an ordinary conversational tone?

A. I talk no very loud that day; have too much trouble; talk no more loud than I do all the time. I do the business with the young man. George was not there, the reason I give it to the old man.

28. Are you sure Mr. George McClelland was not there?

A. His brother told me so.

29. His brother told you he was out of town?

A. His brother told me.

30. Was he there in the room?

A. No; I no see him that day. I asked if George was there. He told me he was out of town.

31. State whether or not you ever told Mr. Francis Beidler that you were in the habit of taking inventories and closing your business every year.

A. No; I tell him we have no time, and no take stock the last three or four years—three years anyway. I told him so myself. That is the reason he wrote so many letters before the statement came; take some time to take the stock for the last statment. I was all the time in the factory. Bill Heesch took the inventory.

Cross-examination by Mr. Cook:

621 Cross-interrogatory 1. Did you and Mr. Beidler talk something about the possibility of making a settlement with your creditors and of his assisting you in that, and your going on and making some arrangement whereby the South Branch Lumber Co. could be paid a larger amount if they could assist you?

A. I never talked with him about making a settlement. I paid the South Branch every month pretty near the same—eight, nine, ten thousand; that was all what I can pay; the business twenty-three, twenty-five, twenty-six thousand—labor and everything together; we know that the most we can pay every month; we make that agreement with him.

2. You don't understand my question. I mean, after you made your assignment, when Mr. Beidler talked with you in May, didn't he then talk about seeing if the claims of the other creditors could

be bought up with his assistance and you and the South Branch make something by your being able to go on?

A. I understand better. He told me that time when he was here, buy all the claims as cheap as possible, you know.

3. Was not that the way in which he wanted you to help him in this case—you to buy the claims up as cheap as possible and he help you and make something in the business that was commenced?

A. He make me that proposition.

4. State exactly what he said to you and what you said.

A. I told him when I won't help him beat the case in my house on the corner.

622 5. Who were present?

A. I and Mr. Beidler.

6. When was that?

A. The first time he came here, and says, you know, I believe it was May. Maybe it was the first day in June, you know. It was the first time Mr. Beidler was here.

7. How much did he say he would pay you?

A. Ten or fifteen thousand dollars.

Q. What did he want you to do?

A. That is something I don't know. I told Mr. Beidler better clear out. You know that was what I tell him. When I like to make fifteen, twenty thousand dollars I no need Mr. Beidler; made me mad, Mr. Cook, when a man ask me something that way. I won't be a rascal to make twenty thousand dollars.

9. He said he would give you fifteen or twenty thousand dollars to help him beat this case—that was the talk that you had?

A. Yes, sir.

That is all.

GEORGE OTT.

STATE OF IOWA, *Scott Co.*, } *ss:*

Subscribed and sworn to by the said George Ott, Sr., on the 23rd day of June, 1887, before me, Flora Haddix, a notary public in and for Scott county, Iowa.

Witness my hand and notarial seal, affixed the day and year last above written.

[SEAL.]

FLORA HADDIX,
Notary Public, Scott County, Iowa.

623 In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division.

THE SOUTH BRANCH LUMBER CO.
vs.
GEORGE OTT *et al.*

Messrs. Cook & Dodge, Smith & Helmer, and A. J. Hirschl appear for plaintiff.

Messrs. Bills & Block appear for George Ott and J. B. Meyer (substituted assignee).

Mr. Bleik Peters appears for Addie Kloppenburg.

Mr. Ernst Claussen appears for Charles Hill.

Testimony on Part of Defendants.

DAVENPORT, IOWA, THURSDAY, *April 7th*, 1887—a. m.

Deposition of George F. White.

Mr. GEORGE F. WHITE, a witness on part of defendants, being first duly sworn, in answer to interrogatories propounded to him by counsel for defendants testified as follows:

By Mr. BILLS:

Interrogatory 1. State your name.

A. George F. White.

2. Where do you live?

A. Davenport, Iowa.

624 3. What is your occupation?

A. Division freight agent of the C., M. & St. P.

4. What was your occupation on the 26th day of April, 1886?

A. General agent of the C., M. & St. P.

5. At what point?

A. Davenport.

6. How long had you been in that position?

A. Since, if I remember correctly—since June, 1882.

7. Did you have charge of the business of the C., M. & St. P. R. R. at Davenport at that time?

A. Yes, sir.

8. State whether or not George Ott had been doing business with that road.

A. Yes, sir.

9. What was the amount of his business with the road—a large business or not?

A. Yes, sir; he paid us quite a large amount of freight in the course of a year.

10. You may state whether or not Mr. Ott owed the said railroad company for freight on goods delivered here at the time he made his assignment; if yes, about how much?

A. Well, I don't know as I can relate the exact amount; my recollection is it was about $850; may have been a little more, may have been a little less; I can't remember exactly.

11. You may state whether or not there was any agreement or arrangement between you and Mr. Ott in relation to your having security of any kind for the said indebtedness at or prior to the time of said assignment; if yes, state what it was.

Objected to as leading and suggestive.

A. Yes, sir; Mr. Ott had always told me that there should
625 be sufficient amount of freight on the track to secure what he owed us.

12. State whether or not there had been goods or property that was shipped to him on your track in that way prior to the assignment.

Objected to as leading and suggestive.

A. Yes, sir.

13. State whether or not there was any such property on your side track at the time of the assignment. If yes, what was it?

Objected to as containing an assumption that was not proved.

A. Yes, sir; there was some window glass.

14. Do you remember how many car-loads of it?

A. My recollection is that there were four car-loads, but it was contained in five cars.

15. State whether or not prior to the assignment of Mr. Ott there had been any talk between you and Mr. Ott in regard to said particular car-loads of glass in relation to his indebtedness to you.

A. Yes, sir; there had.

16. State what it was.

A. Well, he told me that he would secure me with the glass that was on the track for the amount of freight he owed us.

17. When was that, Mr. White?

A. Well, I can't remember the date, but my recollection is that it must have been two weeks previous to the assignment; might have been more than that. I don't think it might have been
626 less time; might have been longer previous.

18. How did he happen to tell you this? How did it come about?

A. Well, Mr. Ott had been owing the company considerable money, and we were reducing the indebtedness and asked him to pay all the time, and he didn't seem to pay it up.

19. State whether or not Mr. Ott gave you any paper—any writing—as to said matter. If yes, will you produce the same, to be copied by the notary?

The witness here produces the paper marked by the notary Exhibit "A."

20. State whether or not you were afterwards paid that amount due from Mr. Ott on account of freight to said railroad Co. If yes, who paid it?

A. Yes, sir; it was paid by Mr. Meyer, the assignee.

21. State what you did with the said four car-loads of glass.

A. I delivered them to Mr. Meyers, the assignee.

22. State whether or not you demanded that Mr. Meyer pay the freight that was due from Mr. Ott, the balance of freight due from Mr. Ott being some $700, before you delivered the said car-loads of glass, and state what the facts were about it.

Objected to as suggestive and leading.

A. Mr. Meyer came to me and asked me if I would deliver him the glass upon the payment of these freight bills; if I had any

other claim on the glass. I told him I had not, and that I would deliver him the glass upon payment of the freight bills.

627 23. State whether or not you declined to deliver the glass unless you would promise to pay the balance of the freight due from Mr. Ott?

Objected to as leading and suggestive.

A. I did.

24. Did you deliver the glass before the freight was actually paid or was the freight paid first?

A. No, sir; I delivered the glass to him; as soon as it was delivered to him he paid me the freight.

25. State what was the practice of your road or the rules of the road for the government of its agents at Davenport at and prior to that time in regard to delivering goods shipped before the freight was paid.

Objected to as immaterial so far as the rules are concerned.

A. Our agents are instructed not to deliver any freight unless the freight bills are paid; if they do they are held personally responsible for the freight.

26. At the time of the assignment on whose track were the four car-loads of glass?

A. On the C., M. & St. P. tracks.

I believe that is all.

Cross-examination by Mr. SMITH:

Cross-interrogatory 1. In April, 1886, you were the general freight agent of the St. Paul road, were you?

A. No, sir; I was the general agent, not the general freight agent.

628 2. Where were your headquarters at that time, Mr. White?

A. At Davenport.

3. How long had your headquarters been there?

A. Well, I want you to understand this: I have been agent, general agent, division freight agent.

4. How long had your headquarters been at Davenport prior to 1886?

A. Since I have been employed by the C., M. & St. P.—since 1879.

5. During all that time you have made your home and headquarters, your business, always at Davenport?

A. Yes, sir.

6. You have known George Ott, then, during all that time?

A. Yes, sir.

7. How long prior to that time have you known him?

A. Well, I have known him, I guess, since 1875 or 1876.

8. How far from his house do you reside?

A. Well, sir, I could not tell you, for I do not know where he lives.

9. How large has been his indebtedness to the road during the year previous to this assignment at any time?

A. Well, I don't know that I can give the exact figures. I think at one time it was over $2,500.

10. When was that?

A. Well, I think it was along towards the beginning of 1886; I am not positive about that; I could not tell the dates without hunting up some records or something.

11. The books of the freight agent at Davenport would show
629 this indebtedness, would it not, from time to time?

A. He might make some reports which would show the amount of the indebtedness carried from week to week. In the railroad business they make a report on the 7th, 14th, 21st, and the last day of the month to the auditor's office, and they make out what is called a balance-sheet, and on that balance-sheet are the amounts of uncollected bills.

12. With the names of the parties owing them?

A. I believe the custom is to put the names on, but I am not positive about it.

13. Duplicates of these reports are kept in the office here, are they not?

A. I could not say; I presume they have a duplicate of it.

14. You think there was about $2,500 owing the road for freight in the fore part of 1886?

A. Well, I could perhaps make it clearer by giving a conversation in regard to the matter. I don't know how much of my own knowledge, but I was told it was between $2,500 and $3,000.

15. What freight or property did the company have in its charge at that time of Mr. Ott's?

A. They had a good many cars of lumber.

16. How many, and where was it?

A. Well, sir, I could not tell you how many cars of lumber there was on the track.

17. Where?

A. Some in Davenport, and some on side tracks between here and Delmar Junction, Iowa.

18. Now, Mr. Ott had been indebted more or less to the company for a long time, had he not? You sort of carried him for a part of his freight for years?

630 A. Not for such an amount as that.

19. More or less for how long a period of time?

A. I could not answer that question, not being the local agent and not having the papers in my charge.

20. Who is the local agent?

A. J. McRaith.

21. Has he been local agent for some years?

A. No, sir.

22. For how long?

A. I think about two years, if I remember right.

23. Has not Mr. Ott been indebted to the C., M. & St. P. in amounts ranging for one to twenty-five hundred for several years prior to his failure?

A. Well, I could not answer that question, not knowing the par-

ticulars of the freight—that is, of the freight bills—during Mr. Knappe's administration as local agent.

24. Well, during the time that you have had knowledge has he not been thus indebted?

A. Well, he may perhaps — been indebted one week and not owe anything the next week; it was sort of customary, if he got a lot of freight in at the end of the week, just before making the reports, to go to Mr. Ott and get the money.

25. That is what you were told?

A. Yes.

26. You were not a party to this transaction?

A. When I was local agent myself that is what I done.

27. When were you local agent yourself?

A. From 1879 to 1882.

28. When did you have the first talk with Mr. Ott relative to his goods in the possession of the road?

631 A. Well, I don't know that I could locate the time.

29. Where was it?

A. Well, I had two or three conversations with him about it, if my memory serves me right. Once in my own office, and I think in his own office.

30. When was that conversation in your office?

A. Well, I think that was about the commencement of 1886, or perhaps February; I could not tell.

31. Was that the first talk upon this subject?

A. I could not remember, sir.

32. Who was present at that talk?

A. I don't think anybody was.

33. What was said?

—. Well, he merely stated that we should not suffer any loss or damage; that he would always have plenty of stuff on the track to secure me.

34. What was the occasion of that remark?

A. The occasion was because he owed a freight bill and hadn't paid.

35. How large was the bill then?

A. I could not tell that.

36. You have given, according to your best recollection, what was stated on that occasion?

A. As near as I can remember.

37. When did you have any talk afterwards?

A. I think I had a talk, if I remember right, about two weeks before the assignment.

38. Where was that talk?

A. Well, I am not positive whether it was in his office or on the street.

632 39. Can you state what was said by *and by* him or the substance of it?

A. I didn't say much of anything; he done most of the talking himself. The amount of it was that I need not be uneasy or any-

thing of that kind; that there would be plenty enough on the track to secure me for any freight bill he might owe us.

40. That was the substance of the talk as near as you can recollect?

A. Yes, sir; that was the substance of the talk as near as I can recollect.

41. About how long prior to his failure was this?

A. About two weeks, as near as I can recollect.

42. Did you see him to talk on this subject from that time, on the morning of the 27th of April, 1886?

A. I think I met him once, and there was something said about it; he simply reiterated what he said before.

43. That you need not fear; there was always enough on the track to secure you?

A. I think at the time he mentioned the glass being on the track.

44. Now, there is no correspondence in your possession showing anything in regard to this understanding?

A. There is no correspondence in my possession otherwise than this scrap of paper.

46. This piece of paper came to your possession when?

A. Well, I got it early in the morning of—I don't remember the date; I could not tell the date—the morning of the 27th of April.

47. There may be several hours difference between the early of a workingman and the early of a professional man. About what hour do — remember getting it?

633 A. As near as I can remember it was between 7 and 8. I can only remember in this way: I usually go to my office at half past seven or within a few minutes of that time, and then of course this talk is necessary, but to show you how I knew what time I got it my mail, which comes by train from all over the country, comes to the local office in the night, and I send the messenger down usually to get it, or my man usually goes down and gets it, and has the mail on my desk when I arrive in the office. This paper was in an envelope and was with my other mail on my desk when I came to my office from breakfast.

48. Must this have been left some time prior to your messenger getting it at the local freight office?

A. This envelope with this paper came from the local freight office with my other mail.

49. And was found by you when you opened your mail that morning?

A. Yes, sir.

50. Was there any communication with this letter when you got it?

A. No, sir.

51. Did you have any communication from Mr. Ott about making such a paper or about the paper after you got it?

A. Well, I had met Mr. Ott probably along towards noon the same day on Second street, and he asked me if I got the paper, and I told him I did.

52. You had been sort of anxious about the bill prior to this time, had you not, Mr. White?

A. Well, if I hadn't been anxious I don't suppose I would have went for him.

53. Had not this claim of the road against Mr. Ott been
634 put in the hands of attorneys prior to this time?

A. Not to my knowledge.

54. Who is or are the attorney or attorneys for the road at Davenport?

A. Well, I am not positive, but I have understood that Grant & Grant were the railroad's attorneys; I supposed them to be.

55. After the report of the local agent who has the immediate charge of the collection of unpaid accounts?

A. The local agent.

56. Doesn't the auditor, where the accounts are considerable, take charge of the collection?

A. I have never known a case of that kind in this country.

57. Do you know whether there was any correspondence between the auditor or any other official of the company not residing in Davenport with either Mr. Orr or an attorney at Davenport about this claim?

A. No, sir; I do not know of any correspondence.

58. Did you have any conversation with any attorney or collecting agent of the railroad other than the local freight agent about this bill?

Objected to as hearsay testimony.

A. I had no conversation with any attorney about it. Mr. D. A. Olin, sup't. of this division, once came here and I had some conversation with him.

59. When was that?

A. I can't locate the time; it must have been—I am not certain whether it was in Feb'y or Jan'y, but it was in 1886; I can't tell the date.

60. You carried on a correspondence with the officials of the company, did you not?

635 Objected to as immaterial and incompetent.

A. What officials of the company do you refer to?

61. You may state any of the officials of the Co. with whom you may communicate in writing.

A. I communicate with the general freight agent and the assistant general freight agent by writing.

62. Did you ever report to them the conversations that you have testified to with Mr. Ott?

A. No, sir.

63. Did you ever communicate these conversations to the local freight agent at Davenport?

A. No, sir.

64. Did you ever communicate them to the attorneys of the railroad at Davenport?

A. No, sir.

65. When, if you know, did these five cars of glass arrive at Davenport?

A. I can't tell you, sir, without going to the records.

66. Without being accurate about how long before the assignment?

A. Well, I think 30 days; I am not positive of it; there may have been other cars of glass coming in and unloading and these come in afterwards, but my recollection is that this glass had been on the track or in transit 30 days.

67. What was the usual course of business between the St. Paul road and Mr. Ott relative to the delivery of his freight at Davenport? Where were the cars put? Where were they usually unloaded? Explain fully, if you know.

A. I don't know how I can answer anything further than they were unloaded from our side track.

68. Well, how many side tracks has the St. P. road got at
636 Davenport from which freight is unloaded in wagons, and where are they?

A. Well, they are situated on Front street or on the river from East Davenport to West Davenport to Brown St., I think.

69. When freight arrives here in train that which is destined for Davenport to be unloaded here is set out upon these side tracks, is it not?

A. Certainly.

70. And these tracks are so ballasted and filled that teams can approach them and unload the cars thus set out in wagons?

A. I am sure I haven't been around to see them. I supposed them to be in proper condition.

71. You have been here a good many years and you know that is the custom?

A. Certainly.

72. How long had these cars of glass been at Davenport and thus set out prior to the 27th of April or 26th?

A. I said I was not positive, but I think 30 days.

73. Do you know whether or not any portion of these five cars of freight had actually been taken away by Mr. Ott before the 27th?

A. I don't think they had; not to my knowledge.

74. I didn't ask you what the fact was. I asked you if you knew what the fact was in that regard?

A. I do not.

75. How large quantities of freight had been received by Mr. Ott at Davenport during the 90 days before his failure?

A. I could not tell you, sir.

76. Do you know about how many cars a month he was in the habit of receiving in 1886?

A. I could not tell you?

77. Have you no idea?

637 A. Well, I have been told by other parties, but I don't know of my own knowledge.

78. Notwithstanding this has been your headquarters?

A. Yes, sir.

79. About how many cars of freight was received and unloaded by Mr. Ott during the 30 or 40 days before the failure?

A. I could not answer that question.

80. Without trying to be definite, is it not true that he had received and unloaded a good many car-loads?

A. Yes, sir; he must have unloaded a good many car-loads or his freight bills would not have been so large.

81. I didn't ask you what the argument was. You saw the freight being received and unloaded?

A. Yes, sir.

82. Don't you know he received and unloaded a good many car-loads during the 30 or 40 days before his failure?

A. I could not state the number of cars that he unloaded, but I should judge there was a good deal of freight coming in—a good deal of lumber and a good deal of glass.

83. You mean that was received by Mr. Ott and unloaded by him?

A. Yes, sir.

84. Was there any employee of the road whose duty it was to keep track of the unloading of cars and who from his employment should know whether or not any part of these five cars of freight had been unloaded by Mr. Ott before his failure?

A. Why, I think the local agent should know, or he is supposed to know.

85. Is he required or has he under him — who is required to check the unloading of cars?

638 A. Not the unloading of car-loads.

86. There is no man employed by the road here, then, at the point of delivery to guard against reclamation?

A. It is not customary to check car-loads.

87. After receiving this paper, Exhibit "A," what did you have done with the freight?

A. After receiving this paper I went to Mr. Grant——

88. I didn't ask for conversation with a lawyer. I asked what you had done, if anything, with the five cars that you have talked about?

A. Well, sir, I asked for orders; took an engine and hooked onto them and took them out of town.

89. To what point did you take them?

A. I think they went to Eldridge Junction. I don't know it of my own knowledge, but that is where I directed them to be taken to.

90. Were they put into the regular train for that point or hauled out by a special engine?

A. Hauled out by an engine.

91. On your orders?

A. Yes, sir.

92. How long did they remain at Eldridge Junction?

A. I believe I think I sent them out in the afternoon and brought them back the next morning, if I remember correctly.

93. If you remember as to when you got your freight from the assignee?

A. I could not tell the day. It may have been a day after. I got it the same day I brought them back.

94. It may have been one, two, or three days after?

A. It could not have been three days after.

639 95. The freight was paid to you in cash by Mr. Meyer, the assignee?

A. Yes, sir.

96. The total amount of the railroad bill?

A. Yes, sir.

97. Before that freight was paid you had ordered the cars back to Davenport, had you not?

A. Yes, sir.

98. You had had an interview with Mr. Meyer, the assignee?

A. Yes, sir.

99. And he had promised to pay the freight if you would bring the cars back?

A. Yes, sir.

100. Do you know whether or not Mr. Meyer knew that the cars had been taken away from the yard at Davenport?

A. I don't remember whether he questioned me in regard to that. I don't think that I volunteered the information to him.

101. You don't remember about it?

A. I don't remember. I remember Mr. Meyer at the time coming around where I was and wanting to know if there was some glass on the track, and then he asked me if I would deliver to him that glass upon the payment of the freight bills, and I told him I would.

102. Didn't he ask you where it was?

A. I can't remember.

103. Wasn't he and Heesch together, and didn't they have a team with them to commence hauling?

A. Not that I know of.

104. Well, you would remember whether Heesch was there?

A. I don't remember it; no, sir; I do not.

640 105. Did you show this Exhibit "A" to Mr. Meyer?

A. I do not remember.

106. Did you say anything to him about this Exhibit "A?"

A. My recollections are that I did not. I think the Exhibit "A" was in the hands of Grant, the attorney for the road.

107. Put there by you?

A. Yes, sir.

108. You mean in the hands of Grant?

A. Yes.

109. And you not only did not show it to Mr. Meyer, but you didn't say anything to him about it?

A. My recollection is I did not show it to him or say anything to him about it.

110. Do you know in whose handwriting that Exhibit "A" is?

A. I do not.

111. Are not you familiar with the handwriting of Exhibit "A?"

A. No, sir; I am not familiar with the handwriting, except the signature of Mr. Ott; I am familiar with that.

112. You have no opinion, then, upon the subject of the handwriting?

A. I haven't any opinion; I don't know that I ever saw any handwriting like it before.

113. In whose handwriting is the $-mark sign and the figures 826.57 in pencil on this paper?

A. I believe it is Whit. Grant's, if my recollection serves me right. I am not positive, though.

114. If you remember rightly, it was made by Whit. Grant, attorney. Now, Mr. White, was this freight paid to — personally?

A. Yes, sir.

115. Where?

A. In the office of Mr. Bills.

641 116. How did you come to go there?

A. I went there at the request of the assignee.

117. Had you seen or interviewed Mr. Bills about it before that time?

A. Not that I recollect of.

118. Do you know upon what tracks this glass stood upon its arrival in Davenport up to the 27th of April?

A. Why, I think it stood on the side tracks south of the freight depot. I don't know it of my own knowledge, but that is the place of standing loads that come in.

119. To be unloaded here?

A. Yes, sir.

Redirect examination by Mr. BILLS:

Redirect interrogatory 1. Mr. White, were these car-loads containing this glass—were the cars locked up when they stood on the side track?

A. No, sir; we don't lock any cars.

2. Do you keep watchmen there?

A. Yes, sir.

3. Do you keep watchmen day and night?

A. A watchman at night.

4. And the cars are near the office? There is some one in the office and freight-house in the day time?

A. Yes, sir.

5. Was Ott the only man in Davenport who owed freight to your Davenport Co.?

A. No, sir.

Objected to as not redirect and immaterial.

6. Did other men, manufacturers and business men here, owe freight to your Co. to as large an amount as Mr. Ott did at times?

642 Objected to as not redirect and immaterial.

A. No, sir; there was not.

8. You mean to say that Mr. Ott received any more freight for the 30 days previous to his assignment than he usually did in 30 days, so far as you know?

A. Not to my knowledge.

9. Is it not a fact that you first went to Mr. Meyer, the assignee, on the same day that you received that paper, and asked him if he could not pay the freight to you—the eight hundred and some odd dollars—and that you would deliver the goods to him then, and didn't he say that he would go and see his attorney about it?

Objected to as leading and not redirect.

A. I am not positive whether I went to him or not.

10. State whether or not Mr. Meyer refused positively to pay the eight hundred and some odd dollars until the property was actually in his possession.

Objected to as leading and not redirect.

A. Yes, sir; he did refuse to pay the freight bills until the property was placed in his possession.

11. State whether Mr. Ott or Mr. Meyer, the assignee, so far as you know, had anything to do with sending said car-loads of glass out to Eldridge Junction, or whether they knew it at the time.

A. They did not.

12. If that paper, marked Exhibit "A," was left at the freight office on the morning of the 27th of April, 1886, would it be sent up with your mail the same morning to your office?

A. Yes, sir.

That is all.

643 Recross-examination by Mr. SMITH:

Recross-interrogatory 1. Now, I understand that you have given all the conversations that you recollect having had with Mr. Ott about this freight prior to his failure?

A. As near as I can remember; yes, sir.

2. Had you ever given any directions to the local agent or anybody concerning these four or five cars of freight prior to the 27th of April, 1886?

A. No.

3. You hadn't enjoined in any way their delivery to Mr. Ott, so far as you recollect?

A. No.

4. Nor do you know of any other person doing so prior to that morning?

A. No.

I believe that is all. That is all.

GEO. F. WHITE.

STATE OF IOWA, }
Scott County, } *ss:*

Subscribed and sworn to by said George F. White, on the 29th

day of April, 1887, before me, Flora Haddix, a notary public in and for Scott county, Iowa.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] FLORA HADDIX.

644 EXHIBIT "A."

Mr. White, agent, etc.:

I consent that you may hold the four car-loads of glass now in possession of the C., M. & St. P. R. R. Co., to secure you for the freight I owe your said company until the same shall be paid.

April 27th, 1886.

(Signed) GEORGE OTT.

(In pencil:) $826.57.

645 In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER CO.
vs.
GEORGE OTT *et al.*

Francis Beidler, being first duly sworn, on oath states that he has read the rebuttal evidence of George Ott respecting a pretended conversation between said Ott and affiant, wherein said Ott has stated that affiant proposed or suggested to him that if he (Ott) would help the complainant win or beat this case affiant would pay him, Ott, ten or fifteen thousand dollars.

And affiant states that the said allegation of the said Ott and his statements in that behalf in his deposition, given at Davenport, Iowa, June 4th, 1887, are absolutely false and without foundation; that it is true that after the bill was filed herein affiant visited Davenport, Iowa, and called upon the said Ott; that during the conversation the condition of Mr. Ott's affairs and the possibility of an adjustment or settlement was talked of; that affiant suggested to the said Ott that if he could settle with all his creditors, except the South Branch Lumber Co., at about ten cents on the dollar that the South Branch Lumber Co. might be willing to furnish the money to enable him to do so and take the assets and arrange some settlement that would be advantageous both to the said South Branch Lumber Co. and to the said Ott; that said Ott declined to
646 take any steps in that direction and the matter there ended; that this affiant never offered or suggested or intimated to the said Ott that either he or the South Branch Lumber Co. or any person or persons on behalf of the complainant in this case would pay or give him, the said Ott, one dollar or any valuable thing to assist the complainant in winning this lawsuit; and further affiant saith not.

FRANCIS BEIDLER.

Subscribed and sworn to before me this 7th day of July, A. D. 1887.

ANNA D. JOHNSON,
[SEAL.] *Notary Public.*

It is agreed that this affidavit may be used as a deposition upon the hearing of said cause.

Dated July 8th, 1887.

SOUTH BRANCH LUMBER CO.,
By COOK & DODGE, F. J. SMITH & HELMER, &
A. J. HIRSCHL.
BLEIK PETERS, *Solicitor for Addie Kloppenburg.*
ERNST CLAUSSEN, *Solicitor for Chas. Hill.*
BILLS & BLOCK, *Att'ys for Def't.*

Endorsed: Filed Aug. 9, 1887. H. K. Love, clerk.

647 *Opinion.*

In the Circuit Court of the United States, Southern District of Iowa.

THE SOUTH BRANCH LUMBER COMPANY, Complainant,
vs.
GEORGE OTT, CHARLES F. MEYER; CHARLES F. Meyer, Assignee of Geo. Ott under General Assignment for Benefit of Creditors; Charles Hill, Addie Kloppenburg, & Charles Beiderbecke, Guardian of Addie Kloppenburg. } In Chancery.

Frank J. Smith & Helmer, Cook & Dodge, A. J. Hirschl, solicitors for complainant; Bills & Block, Bleik Peters, Ernst Claussen, for defendants.

The present bill in equity to set aside said assignment and mortgages in aid of the complainant's attachment was filed in October, 1886, after the attachment suit had been removed to this court.

The property transferred by the assignment has been converted into money by the assignee and is upon deposit to await the result of the litigation concerning it. The State judge has so far suspending orders for its distribution. The proceeds of the property amount to about $40,000.

648 LOVE, *J.:*

This is a bill in equity. Its purpose is to set aside certain transfers of property by defendant Ott as fraudulent and void and subject the same to the complainant's attachment. On the 27th day of April, 1886, the defendant, George Ott, executed and delivered to the defendant, Charles F. Meyer, a deed of general assignment for the benefit of his creditors, which deed was recorded in Scott county, Iowa, on the same day. The assignee, on the said 27th day of April, took possession of the property and published notice, as required by

law, and thereafter, on the 14th day of May, 1886, he filed his inventory and bond in the circuit court of said county. On the 28th day of April, 1886, this complainant filed its petition at law in the district court of Scott county, Iowa, against said Ott, demanding judgment for the sum of $37,191.69 upon notes and accounts against Ott. The complainant sued out a writ of attachment in said action upon the ground of fraud, and caused the same to be served upon said defendants, Charles F. Meyer, George Ott, Charles Hill, and Addie Kloppenburg as garnishees; said attachment was also levied upon certain real estate of Ott in Scott county. Thereafter said case of this complainant *v.* Ott was removed to this court upon the application of the complainant, and it is now pending here. It sufficiently appears by the bill, answer, exhibits, and testimony that on the 20th day of April, 1886, said Ott, who was then in insolvent circumstances, in order to secure said defendant Hill in the sum
649 of about $3,000, for which the latter was endorser for Ott, executed to Hill a chattel mortgage upon all the stock, goods, and merchandise of said Ott, consisting of glass, glass windows, doors, window-frames, blinds, sashes, &c., then kept in building No. 410, Davenport; also upon the entire stock of lumber and manufacturing materials then on hand and kept upon the premises of said Ott's factory, in Davenport, and all that might thereafter be purchased by said Ott during the existence of the mortgage to replenish the stock, reserving to Ott the right to manufacture and sell said stock in the ordinary course of his business.

This mortgage was delivered to said Hill with an agreement between him and Ott that it should be withheld by said Hill from record, and should not be recorded till Ott should direct that it might be recorded. Said mortgage was not in fact recorded till April 26, 1886, when Ott gave his consent that it should be done. It appears that in the time intervening between the delivery and execution of the mortgage the complainant, in ignorance of its existence, gave further credit to said Ott. It is admitted that Hill paid off the indebtedness of Ott for which he was surety. The consideration of the mortgage was good and unimpeachable. It also appears that Ott was the guardian of the infant defendant, Addie Kloppenburg, and that he received her money to the sum of about $3,500, and invested it in his business. To secure this sum of money to her Ott, on the same 20th day of February, 1886, in his individual capacity, executed to her a chattel mortgage upon the same
650 property which is embraced in the mortgage to said Hill. This mortgage was not recorded until the 26th day of April, 1886. It seems to have been withheld from record at the instance of Ott, but there is no evidence that Addie Kloppenburg consented or was in any way privy to the non-recording of the mortgage. It is in evidence that about the same time of the execution of the assignment Ott gave preferences to other creditors. Thus, on the 26th day of April he gave preferences to T. W. McClelland & Co. and to Chris. Mueller, and on the next day, April 27, before the execution of the assignment, to the Milwaukee and St. Paul Railway Company. There is no reason to doubt that at the time when he gave those

preferences he knew of his embarrassed condition and inability to pay his debts, but there is no direct evidence that he then intended to make the assignment. The fact of his intention at that time to make a general assignment is not established to the satisfaction of the court.

The counsel for the assignee and the defendant Hill contend, in the first place, that this court has no jurisdiction of the matters in controversy, for that the money realized from the sale of the property is a fund in the possession of the circuit court of Scott county, Iowa, by virtue of the assignment proceedings; that said assignee is an officer of said court, and that he holds said fund as the custodian of said court. This, it is claimed, excludes the jurisdiction of any other tribunal to hear and determine controversies touching said fund and the distribution of the same.

651 But I have no doubt upon the question of jurisdiction. The assignor could not give jurisdiction to the State court by the simple act of assignment, not until the assignee performed the acts required of him by section 2118 of the code of Iowa. Could the jurisdiction of the State court have attached and the process of attachment *was* sued out and served before the acts thus required were performed? The inventory and bond were filed May 14th, 1886. The attachment was served April 28th, 1886.

See upon this point Shelby *v.* Bacon, 10 Howard, p. 56.

Surely it would be competent for a creditor with liens upon the property to file a bill to impeach a fraudulent assignment at any time before the giving of the bonds and filing the inventory. How could the jurisdiction of the State court be exclusive before any action whatever of the assignee or notice to the court of the facts of assignment? The assignee himself, until he gave bonds, had no power over the property, and how could a court acquire jurisdiction without any step whatever being taken to give it power over the assets of the assignor? When did the jurisdiction of the State court attach? It was expres-ly held by the Supreme Court of the U. S. in Shelby *v.* Bacon, 10 Howard, 56, that where the assignment is voluntary it is necessary for the assignee, in order to give the court jurisdiction, to file an inventory of the assets in the clerk's office of

652 the court, and also to give bond and make the verification under oath required by law.

These are held to be jurisdictional facts when prescribed by the statute, and the courts say that without proof of these facts it is not perceived how the court could take jurisdiction of the case.

The jurisdiction of the court in this case goes back to the origin of the attachment. The bill is purely ancillary. It was filed in and of the attachment. If the attachment was good, then the power of this court over the property by virtue of the removal relates back to a time before the jurisdiction of the State court attached, and our jurisdiction being thus prior in time could not be divested by any act of the State court. After the removal of the attachment suit no court whatever, except the U. S. circuit court, to which the case was transferred, had any authority to deal with the attached property or protect it, by injunction or otherwise, from sale or other disposition

by process from the State court, or against trespasses and seizure by individuals acting without any authority whatever.

But although I think the jurisdiction of this court attached before that of the State court, yet I do not consider that fact essential in order to maintain the present jurisdiction. Of what parties and subject-matter did the State court by virtue of the proceedings therein acquire exclusive jurisdiction? Surely it could not enter a conclusive judgment against a party not before it. Now, could a non-resident party claiming a paramount lien be compelled to go be-
653 fore the State court and there assert his claim?

Could the assignor by his simple act of assignment deprive a non-resident mortgagee of his constitutional right to sue in the Federal court and force him, willing or unwilling, to prosecute his claim in a local court, in which a host of resident creditors would, perhaps, be able to obtain prejudiced judgments against him?

It would certainly be most extraordinary if a resident debtor could by a general assignment force his non-resident creditor into the local courts and thus deprive him of his clear and unquestionable right of an impartial forum in which to meet his adversaries.

It is well settled that a discharge under a State insolvent law will not release a debt due to a citizen of another State, no matter where the debt originated or was made payable, unless the creditor appears and voluntarily submits to the jurisdiction of the court by becoming a party or claiming a dividend thereunder.

Hawley *v.* Hunt, 27 Iowa, 303.

Upon what principle does this proceed except that the State court cannot by virtue of State legislation obtain jurisdiction personally of a non-resident creditor without his voluntary consent, for if the court has jurisdiction it may dispose of any and all questions between the parties before it.

Now, if it is incompetent for State courts to obtain jurisdiction by virtue of State insolvent laws, how can it be said that their
654 jurisdiction may be acquired by virtue of the assignment laws and made exclusive of all other courts? But I understand that this question is settled by judicial decisions.

See Knoxville N. B. *v.* Hamrick, 67 Iowa, 583.
Rumsey *v.* Town, 20 Fed. Rep., 553.
Fleischer *v.* Grenwald, 20 " 547.
Shelby *v.* Bacon, 10 Howard, 56.

In Knoxville N. B. *v.* Hamrick the supreme court of Iowa say that—

"An original and independent action in equity may be brought in the same or another court for the purpose of determining the equities and priorities to the fund in court under assignment. Therefore where the validity of a chattel mortgage was involved in determining the rights of creditors an independent action in reference thereto might be brought in another court and transferred

to a Federal court, and that the adjudication of the Federal court on such questions of which it had jurisdiction would be final."

Same, Rumsey *v.* Town &
Fleischer *v.* Greenwald, *supra.*

It seems to me that the case of Shelby *v.* Bacon is conclusive of this controversy upon the question of jurisdiction. I am not able to distinguish this case from the case at bar. The supreme court in that case held that "a citizen of Kentucky can maintain a bill in the circuit court of the United States in Pennsylvania
655 against citizens of the latter State who are assignees of an insolvent corporation to establish his demands against the assets in their hands and have such satisfaction therefrom as he may be equitably entitled to, although the proceedings of the assignees are placed by the law of Pennsylvania under the control of the State court and the assignees have actually come under the jurisdiction."

But it may be asked, Of what avail would a decree here be, since the property is under the actual control of the State court and beyond the reach of execution by this court?

We are not now concerned with this question. It is entirely competent in a court with proper jurisdiction to determine the rights of the parties without respect to the remedy or the state and conditions of property to which resort must be had for execution. This is true in all cases except where the jurisdiction is purely *in rem.*

Here the proceeding is *in personam* as well as *in rem.* I will not assume that the State court in making the order of distribution will disregard a final adjudication of this court settling the rights of the parties.

It therefore behooves the assignee defendant here to look out for his own protection. He is personally before this court in a case in which the jurisdiction attached before the filing of the bond and inventory in the State court. Having prior jurisdiction, it is competent for this court to order an injunction restraining him from
656 paying the proceeds of the property to the general creditors to the injury of a creditor having a paramount lien. In a word, he is subject to any personal judgment or decree which it is competent for this court to render. The State court ought not to compel the assignee to make dividends until the final determination of this litigation, for if such an order should be imposed on the assignee it might prove of most serious consequence to him.

As to the power of this court to grant injunctions in cases where its jurisdiction attaches before that of the State court and in removal cases restraining proceedings in the State court, notwithstanding the sweeping prohibition of sec. 720, Rev. Stat. U. S., see—

Fish *v.* Union Pacific R. Co., 10 Blatch., 518.
French *v.* Hay, 22 Wal., 250.
Dietzsch *v.* Huidekoper, 103 U. S., 494.

In many cases where the State court has undoubted prior jurisdiction and possession of the *res*—as, for example, the case of de-

scedents' estates—parties may nevertheless proceed in a proper Federal court to have their rights adjudicated; but when judgment is thus obtained the judgment creditor, instead of attempting to seize the property in execution, must go with it for payment to the court having control of the property.

This was substantially decided in Yonley *v.* Lavender, 21 Wall., 276.

657 The next and, indeed, the most important question is whether or not the assignment can be sustained as a valid instrument. If it was not valid it must be because the preferences given contemporarily with it, or nearly so, must be treated as part and parcel of the assignment itself. Standing alone, the assignment is good and it cannot be successfully impeached.

If we overturn the assignment the result will be that all the property will go to one creditor, and thus at the instance of that creditor the court will set aside the assignment because of preferences to a comparatively small amount and practically give a preference to this complaining creditor to a sum sufficient to absorb the whole property. This would certain- be an inequitable result. It would be in the highest degree inequitable in another view. The highest equity in the distribution of the property of insolvents is equality.

The fundamental doctrine of equity in dealing with insolvent estates is that they should be distributed *pro rata* to creditors. The reason of this is obvious. All creditors contribute *pro rata* to the effects of insolvents. If, therefore, all cannot be paid in full it is but common justice that they should receive back of what they have contributed a due proportion of their respective contributions. To pay one in full out of the common contributions and leave all others unprovided for is shocking to our sense of justice. Equity, therefore, abhors preferences. Equality is equity. Equity cannot be made to depend upon fleetness of foot. Diligence is not discouraged in equity, but a mere race of diligence by one

658 creditor to secure all to himself, to the absolute exclusion of all other not less meritorious creditors, is discouraged and discountenanced in equity as repugnant to natural justice. Nevertheless, where one creditor has secured a right to prior payment by attachment or otherwise or a legal preference by the voluntary act of a debtor the court of equity will not disturb, but rather uphold, these legal rights, for ordinarily equity follows the law; but in order to induce such action by a court of equity a clear and satisfactory, not doubtful, case must be made out and established by the party seeking such unjust advantage. The burden is upon this complainant, in order to entitle itself to a decree setting aside the the written assignment, to show by satisfactory evidence—

First. That the written assignment and the preferences complained of were one and the same transaction.

2nd. That in this transaction it was the purpose and intention of the assignor to make a general assignment of his property and effects for the benefit of his creditors.

The counsel for the complainant seems to me to have argued the question as if its solution depended mainly upon the decisions of

other States than Iowa. Great stress has been put upon the adjudications of other States under their various statutes, while little has been said of the decisions of the supreme court of Iowa. It is manifest, however, that this court must follow the rule laid
659 down by the supreme court of Iowa in the construction of an Iowa statute. We must look, therefore, chiefly to Iowa cases for controlling authority upon the question now before us.

From these cases it is clear that an insolvent debtor may with certain limitations prefer one or more creditors by a separate conveyance and at the same time make a general assignment of his remaining property for all his creditors. It is entirely lawful for the insolvent to prefer one or more of his creditors; nay, he may lawfully transfer all his property to one favored creditor, to the entire exclusion of all others. Such an act would be entirely lawful and unimpeachable, and the insolvent may prefer one creditor and make a general assignment for the benefit of all others, provided that the two transfers of conveyances be not part and parcel of the same transaction; but by what rule or test, as laid down by the supreme court of Iowa, if any, may we determine whether two or more transfers—one purporting to be a preference to some chosen creditor and the other a general assignment—are, in fact, but one and the same transaction? For if in a given case they are one and the same transaction it is settled that the assignment cannot be supported.

It is obvious that the insolvent, knowing his inability to pay all, might form the purpose in his own mind or even a positive determination to transfer and convey all his property for the benefit of his creditors. This, if done by a general assignment under the law without preferences, would be entirely legal; but the insolvent
660 might at the same time wish and intend to prefer certain favored creditors, and, seeing that he could not do this in the general assignment without wholly invalidating the instrument of transfer, he might attempt to evade the law by executing separate instruments or transfers to secure particular and favored creditors. Now, such a transaction, if consummated, would be an evasion of the law and a fraud upon its provisions. The law would not therefore permit it, but would regard the several transfers as part and parcel of the same transaction and treat the whole as a general assignment with preferences, and therefore void. In other words, the law would not permit an insolvent to consummate a fraud upon its own provisions. But suppose the insolvent should with entire good faith—that is, without any purpose of evading the assignment law, and without intending at the time to make a general transfer of all his property for the benefit of his creditors—prefer some creditor by either payment or security, such an act would be perfectly lawful.

It could not be successfully impugned, and it would make no difference that the act of preference and assigning should be near in point of time, even on the same day. It is obvious that the coincidence or nearness of time through that fact might be evidence tending to show the substantial unity of the transfers would by no means conclusively demonstrate the sameness of the transactions. An insolvent might at one hour of the day in good faith give some

preferred creditor security or payment without any purpose of making a general assignment, and he might then find that
661 the very act of paying or securing the preferred creditor imposed upon him a necessity of making a general assignment or he might make up his mind to do it by the advice of counsel. Again, the insolvent might prefer and satisfy certain creditors with the hope, belief, and expectation of thus tiding over his difficulties and continuing his business. He might thus expect and intend to avert the necessity of closing up his business and making an assignment, and he might, in the same hour, afterwards find, by the action of other creditors or the advice of counsel, that he had precipitated the very crisis in his affairs which he sought to avert.

Hence, I say that the nearness of the two or more transfers in point of time is no sufficient test by which we may solve the question to determine whether or not the two transactions are in fact one, and therefore to be treated as a general assignment with preferences.

In Farwell *v.* Jones, 63 Iowa, 316, the supreme court held that the fact that mortgages and instruments purporting to be a general assignment were all made on the same day, acknowledged before the same officer, and delivered to the recorder by the same person was not sufficient to show that the mortgages were a part of the assignment, it being proved that the mortgages were executed in the forenoon, when the party did not contemplate making the assignment, and that the purpose to do so was conceived in the afternoon, when the parties to whom the mortgages were given had separated.

If we stop a moment to consider the reason of the thing we
662 will, I think, conclude that the intention of the assignor must be the true and guiding principle of decision. It is a matter of good faith. The assignor may in good faith prefer one creditor—that is, he may, if he has no purpose to evade or violate the law, pay or secure any favored creditor, though at the same time he may know himself to be insolvent. It may not be just or equitable to do so, but it is strictly legal; but if at the time of giving the preference he intends to follow it up with a general assignment, and if he does in fact follow it up, the inference is that he adopts that mode of proceeding to evade the law. He acts in bad faith. His purpose is to commit a fraud upon the law, and the general assignment which he executes cannot be upheld. Thus it becomes a question of intention whether or not the transactions are to be treated as one and as such held to be a general assignment with preferences, which is unlawful.

The supreme court of Iowa have repeatedly affirmed this principle, and notably in the latest cases determined by that court.

See Caldwell's Bank *v.* Crittenden, 66 Iowa, 237.
Van Patten & Marks *v.* Burr, 52 Iowa, 518.

In these cases the court distinctly and repeatedly declares that the intention of the assignor is the true question to be decided in determining the true character and validity of an assignment with contemporaneous preferences separately given.

We must, therefore, in order to reach a just conclusion in the

663 case before us, search in the evidence submitted for the real intention and purpose of the defendant Ott in the several transactions which preceded the execution of the assignment. Was it, then, his purpose to close his business and transfer the whole of his property for the benefit of his creditors, and were the preferences and assignment a part and parcel of one transaction by which the assignor sought to evade the provisions of the assignment laws? All that I can now say is that the burden is upon the complainant to establish the fact of Ott's unlawful intention; that in order to justify a decree giving the whole property to the complainant, to the exclusion of all others, clear and satisfactory evidence of the fact in question should be given to the court, and that in my opinion the evidence to that purpose is not satisfactory. Counsel for the complainant in more than one place repeats the argument that Ott knew of his insolvent condition, and that "something must be done," and that "he made both the preferential securities and the assignment under the impulse of such knowledge."

This argument is not convincing to my mind. It is not improbable that Ott, knowing his embarrassed condition, felt, in the language of counsel, "that something must be done," but what that something was which he had in contemplation is not at all apparent. It was not necessarily a general assignment. He may have had in view an extension of time or the assistance of friends. An assignment is bankruptcy, a total collapse of all the assignor's business; and this was probably the very calamity from which
664 Ott averted his attention, hoping even against hope for some better solution of his difficulties. We know very well with what delusive hopes men in Ott's situation deceive themselves and how they strive to the last to avert an acknowledgement of bankruptcy, which is commercial death.

We come next to consider the Hill mortgage.

That mortgage was, in my judgment, fraudulent in fact as to creditors, because the mortgagee agreed not to record it, and this in order to save the credit of the mortgagor; in other words, the mortgagee promised to keep it a secret, so that the mortgagor might get credit, which he could not otherwise have obtained.

The mere fact of withholding a mortgage from record without any agreement to do so may not amount to fraud in fact, because it may be the result of accident or carelessness without any intent to deceive.

But where the mortgagee expressly agrees not to record so as to enable the mortgagor to get credit which no one would otherwise extend to him no such excuse or explanation can be made, and, moreover, he must be held to intend the natural consequences of what he agrees to do and actually does.

What are the inevitable consequences of such an agreement when carried out? The mortgage was upon the whole stock; it gave the mortgagee the right to take possession. Would any merchant knowing this have given credit to the mortgagor?

The Supreme Court of the United States, in Blennerhassett

665 *v.* Sherman, 105 U. S., 100, fully recognizing the doctrine that to withhold a mortgage from record purposely in order to save to the debtor a fictitious credit is an act of fraud as to creditors—the Supreme Court in this case quotes with approval the language of several State courts, holding that the intentional withholding of a deed from record or an agreement to do so in order to give the grantor a fictitious credit makes the instruments, though otherwise unexceptional, fraudulent as to creditors. In the case of this Hill mortgage secrecy in concealing the fact of its existence from creditors was a part of the very consideration of the deed. It may be assumed with some reason that if Hill had not agreed to withhold the instrument from record it would not have been executed, since it appears that the promise of the mortgagee not to record was one of the inducements to the insolvent mortgagor to execute the mortgage. It is not necessary, therefore, in deciding the question of the validity of the Hill mortgage with respect to creditors, to enter upon the apparent conflict detween the Federal and State courts of Iowa as to the effect of a stipulation for the retention of possession with an agreement that the mortgagor may sell and dispose of the property in the usual and ordinary course of business without any obligation to apply the proceeds upon the mortgage debt.

Where there is fraud in fact there is no conflict whatever in the doctrines of the two jurisdictions, and here we have a case of actual fraud.

666 What, then, is the legal effect of the Hill mortgage with respect to the money in the hands of the assignee? That mortgage was given for an honest debt, and its lien was perfectly valid between the parties to it.

Against the estate of a mortgagor it is a just, moral, and legal obligation. The mortgagor would, in order to secure an unincumbered title to his property, have been compelled to pay off the mortgage debt to Hill. How, then, did the assignee take the mortgaged property by Ott's assignment? Did he take any greater interest—any other rights than those which Ott possessed? Could Ott transfer to the assignee rights which he did not himself possess? If this question be answered in the negative, then the assignee could set up no defense against the mortgage, because his assignor had none. The assignee could not maintain as a defense the fraud upon creditors in the execution of the mortgage. That was a ground of impeaching the validity of the mortgage peculiar to such creditors as were deceived by the fraud and misled and injured by the intentional non-recording of the mortgage. The right to attack the mortgage on that ground was personal to creditors, and they might insist upon it or waive it at their pleasure and option. If they saw fit to waive it there is no reason why the assignee should not pay the sum secured as a just debt against the mortgagor's estate and as a prior lien upon it. How, indeed, could the assignee sell the property to any advantage whatever without discharging it from the lien of that mortgage. He could not impeach its validity, and at all events he

667 does not in peach it in the present case. As to what may or may not be done in some other case in some different tribu-

nal we cannot notice it. It is foreign to our present inquiry. Suffice it to say that we have the whole matter before us in this equity suit with priority of jurisdiction, and that it is competent for us to do full and not partial justice. What, then, would the assignee have been compelled to do if the present complainant had not caused the issue of the attachment and filed the bill in equity in this case? He would have been compelled to pay off the mortgage. If he had not paid Hill his mortgage debt the lien would have continued and Hill might have enforced it against the purchasers from the assignee. The money for which the property was sold takes the place of the property, and in equity the lien of Hill's mortgage extends to the money now in the assignee's hands. What the present complainant asks is that so much of the money realized from sale as may be sufficient to pay his mortgage debt shall be so applied instead of being paid into the hands of the fraudulent mortgagee. No other creditor is objecting to this or opposing it. The other creditors will not be prejudiced by the decree asked by the complainant, since the mortgage is a lien which must be removed, and it matters not to them who shall receive the money. If it is not paid to the complainant it will go to the fraudulent mortgagee and not to the creditors who have proved under the assignment.

668 Why should not the complainant be rewarded for his diligence and indemnified for his outlay of money in successfully impeaching the mortgagee and establishing the fraud? That he was misled, deceived, and injured by the fraud in keeping the mortgage from the record there is no reason whatever to doubt. It is fair to presume that if the mortgage had been recorded the complainant would have refused further credit to the mortgagor and taken immediate steps to secure what was already due upon past sales. We have no evidence that any other creditors were so misled, deceived, and injured. They may, for aught that we know, judicially have had notice of the unrecorded mortgage, or their debts may have accrued before the execution of that instrument. At all events, none except the present plaintiff are here complaining and asking relief against the consequences of the fraud.

We cannot refuse justice to this complainant, because no other creditor sees fit to ask relief.

As to the Kloppenburg mortgage, it stands upon wholly different grounds. No fraudulent intent can be imputed to the infant mortgagee in that instrument. If it was not recorded it was not her fault, and no one could be authorized to commit a fraud on her part by withholding it from record. It was given for an honest and most meritorious debt. The proof of delivery is entirely sufficient. The creditors have no equity whatever as against her. The money which Ott held in trust for her went into his business and helped to swell his assets. Ott had no right to her money, or to that which

her money purchased, and Ott's creditors must take his
669 place and stand in his shoes. They cannot justly claim what did not equitably belong to him.

670 THE SOUTH BRANCH LUMBER COMPANY, Complainant,
vs.
GEORGE OTT, CHARLES F. MEYER; CHARLES F. Meyer, Assignee of George Ott under General Assignment for Benefit of Creditors; J. B. Meyer, Assignee of said George Ott, &c.; Charles Hill, Addie Kloppenburg, and Charles Beiderbecke, Guardian of Addie Kloppenburg, and Auguste Meyer, Executrix of the Last Will of Charles F. Meyer, Deceased. } No. 125. Equity.

This cause came on to be heard at this the June term of this court, the said complainant appearing by Cook & Dodge, F. J. Smith & Hellmer, and A. J. Hirschl, its solicitors, and said defendants, George Ott, Charles F. Meyer, Charles F. Meyer, assignee of George Ott under general assignment for benefit of creditors; J. B. Meyer, assignee of said George Ott, &c., appearing by Bills & Block, their solicitors, and said Charles Hill appearing by Ernst Claussen, his solicitor, and said Charles Beiderbecke, guardian of Addie Kloppenburg, appearing by Bleik Peters, his solicitor; and this cause having been argued by said respective counsel, and therefore, upon consideration thereof, it was ordered, adjudged, and decreed as follows, to wit:

671 That this court has jurisdiction to entertain the bill of complaint in this suit, and to determine the matters and issues therein raised.

That the said deed of general assignment made by said George Ott to said Charles F. Meyer as assignee for the benefit of the creditors of the said Ott, of date April the 27th, 1886, is not fraudulent or void for the reasons stated in the bill of complaint in this suit, and that therefore complainant is not entitled to have the same set aside or decreed void and of no effect.

That the said chattel mortgage made by said Ott to defendant, Charles Hill, of date February 20th, 1886, to secure to said Hill the sum of $3,000, and covering the stock of manufactured goods, &c., owned by said Ott at said time, is and was fraudulent in fact as to the creditors of the said Ott, and especially as to complainant, and that said complainant is entitled to receive, to apply upon the indebtedness from said Ott to it referred to in said bill, from the proceeds of the property in the hands of the said assignee of said George Ott as such assignee, the amount which would be due and payable on said Hill's chattel mortgage from said Ott to said Hill if said mortgage had been and was in all respects legal and valid, which amount is adjudged to be at this time, with interest, the sum of three thousand two hundred and twenty-five dollars ($3,225), which amount shall draw interest at six per cent. from this time until paid by said assignee.

672 That as to said Addie Kloppenburg and Charles Beiderbecke, her guardian, it appearing to the court that the said Addie was and is a minor, and that the said chattel mortgage made by said Ott to her, of date February 20th, 1886, to secure $3,500, was given to secure the payment of money received by said Ott as the guardian of the said Addie, and by said Ott invested in his said business and in his said property so assigned to said Meyer and now constitnting a part of the fund in the hands of the said assignee of said Ott, and that the lien of said mortgage and of said Addie Kloppenburg, said minor, follows said fund into the hands of the assignee, and that such lien and equity of said Addie is superior to the equity of complainant, it is adjudged and decreed that as to said Addie Kloppenburg and her said guardian the bill of complaint in this suit is dismissed.

And the court further finds that the allegations of the bill respecting the issuance of an attachment on the 28th day of April, 1886, against the defendant Ott for the sum of $37,191.69 and the service of said attachment of garnishment and levy upon real estate are true, and that there is now in the hands of defendant J. B. Meyer, as assignee of George Ott, a sum of money exceeding $35,000.

And, in pursuance of the agreement of counsel in open court, it is ordered that each party pay its own costs; that no party shall receive solicitor's fees from the other, and as to the incidental costs of the officers of the court the complainant shall pay one-half part and the defendant Meyer, assignee, the other half part.

(Signed) J. M. LOVE, *Judge.*

673 Afterwards, to wit, there was filed on the 14th day of Nov. A. D. 1887, the petition of complainant for appeal, which is in words and figures following, to wit:

In the Circuit Court of the United States, Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY, Complainant,
vs.
GEORGE OTT, J. B. MEYER, Assignee of George Ott under General Assignment for the Benefit of His Creditors; Auguste Meyer, Executrix of the Will of Charles F. Meyer, Deceased; Charles Hill, Addie Kloppenburg, and Charles Beiderbecke, Guardian of Addie Kloppenburg, Defendants. } In Equity.

Petition of Complainant for Appeal.

The above-named complainant, South Branch Lumber Company, a corporation organized and existing under the laws of Illinois, conceiving itself to be aggrieved by the final decree rendered in the above-entitled cause on the seventeenth day of September, 1887, doth hereby appeal therefrom to the Supreme Court of the United

States, and it prays that this its appeal may be allowed, and
674 that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court. Dated this 12th day of November, 1887.

SOUTH BRANCH LUMBER COMPANY,
By COOK & DODGE, F. J. SMITH & HELMER, AND A. J. HIRSCHL, *Its Solicitors.*

Endorsed: Filed Nov. 14th, 1887. H. K. Love, clerk.

And afterwards, on the same day, to wit, Nov. 14, 1887, the order for granting appeal was filed and entered of record, and reads in words and figures following, to wit:

In the Circuit Court of the United States, Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY, Complainant, *vs.* GEORGE OTT, J. B. MEYER, Assignee of George Ott under General Assignment for the Benefit of His Creditors; Auguste Meyer, Executrix of the Will of Charles F. Meyer, Deceased; Charles Hill, Addie Kloppenburg, and Charles Beiderbecke, Guardian of Addie Kloppenburg, Defendants.	In Equity.

Order for Granting Appeal.

675 This day (November 14, 1887) comes the complainant in above-entitled cause, South Branch Lumber Company, by Cook & Dodge, F. J. Smith & Helmer, and A. J. Hirschl, its solicitors, and on its motion an appeal to the Supreme Court of the United States is allowed on its entering into bond to the defendants in the penalty of eight thousand dollars ($8,000) and conditioned as the law directs.

(Signed) J. M. LOVE, *Judge.*

And also on the same day, to wit, Nov. 14th, 1887, the bond for appeal was filed by the said complainants, and which reads in words and figures following, to wit:

In the Circuit Court of the United States, Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY, Complainant,
vs.
GEORGE OTT, J. B. MEYER, Assignee of George Ott under General Assignment for the Benefit of His Creditors; Auguste Meyer, Executrix of the Will of Charles F. Meyer, Deceased; Charles Hill, Addie Kloppenburg, and Charles Beiderbecke, Guardian of Addie Kloppenburg, Defendants.

Bond for Appeal.

676 Know all men by these presents that we, South Branch Lumber Company, complainant, a corporation organized and

existing under the laws of the State of Illinois, and F. H. Griggs and G. P. McClelland, of the county of Scott and State of Iowa, are held and firmly bound unto George Ott, J. B. Meyer, assignee of George Ott under general assignment for the benefit of his creditors; Auguste Meyer, executrix of the will of Charles F. Meyer, deceased; Charles Hill, Addie Kloppenburg, and Charles Beiderbecke, guardian of Addie Kloppenburg, in the sum of eight thousand ($8,000.00) dollars, to be paid to the said obligees; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 12th day of November, 1887.

Whereas the above-named South Branch Lumber Company is about to prosecute an appeal unto the Supreme Court of the United States to reverse the judgment and decree rendered in a certain action at the June term, 1887, by the circuit court of the United States for the southern district of Iowa, eastern division, in which action South Branch Lumber Company was complainant and the above-named obligees were defendants:

Now, therefore, the condition of this obligation is such that if the above-named South Branch Lumber Company shall prosecute its said appeal to effect and answer for all costs and damages
677 rendered or to be rendered in case the decree shall be affirmed, or if it shall fail to make good its said appeal, then this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof the said corporation, South Branch Lumber Company, has caused this instrument to be signed by its secretary and its corporate seal to be affixed, and the said F. H. Griggs and G. P. McClelland have signed and sealed this instrument.

SOUTH BRANCH LUMBER CO.
JACOB BEIDLER, *Pres.*
[SEAL.] FRANCIS BEIDLER, *Sec'y.*
F. H. GRIGGS. [L. S.]
G. P. McCLELLAND. [L. S.]

STATE OF IOWA, } ss:
Scott County, }

We, F. H. Griggs and G. P. McClelland, being duly sworn, depose and say each for himself that he is worth the sum of more than twenty-five thousand ($25,000.00) dollars over and above all his just debts and liabilities.

F. H. GRIGGS.
G. P. McCLELLAND.

Subscribed by the said F. H. Griggs and G. P. McClelland in my presence and by them severally sworn to before me this 12th day of November, 1887.

EDWARD E. COOK,
[SEAL.] *Notary Public, Scott County, Ia.*

678 THE STATE OF IOWA, } ss:
Scott County, }

I, W. J. Birchard, clerk of the district court in and for said county, hereby certify that the surety on the foregoing bond are known to me, and their financial standing is such that, in my opinion, they are amply good for the amount thereof, and that I should approve the same if tendered in any proceeding in the court of which I am clerk.

Witness my hand and the seal of said district court this 12 day of November, A. D. 1887.

W. J. BIRCHARD,
[SEAL.] *Clerk of District Court, Scott Co.*

Keokuk, Iowa, November 14th, 1887.

The foregoing bond is hereby approved.

J. M. LOVE, *Judge.*

Endorsed: Filed Nov. 14, 1887. H. K. Love, clerk.

679 In the Circuit Court of the United States, Southern District of Iowa, Eastern Division.

SOUTH BRANCH LUMBER COMPANY, Complainant,
vs.
GEORGE OTT, J. B. MEYER, Assignee of George Ott under General Assignment for the Benefit of His Creditors; Auguste Meyer, Executrix of the Will of Charles F. Meyer, Deceased; Charles Hill, Addie Kloppenberg, and Charles Beidebecke, Guardian of Addie Kloppenberg, Defendants. } In Equity.

Citation.

UNITED STATES OF AMERICA, *ss:*

To the above-named defendants and to each of them, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October, 1888, pursuant to an appeal allowed to and taken by South Branch Lumber Company from the decree rendered in the above-entitled cause in the
680 said circuit court of the United States, southern district of Iowa, eastern division, on the seventeenth day of September, 1887, to show cause, if any there be, why the said decree should not be reversed and speedy justice should not be done to the parties in that behalf.

Witness the Honorable James M. Love, district judge of the dis-

trict court of the United States for the southern district of Iowa, this fourteenth day of November, A. D. 1887.

J. M. LOVE, *Judge.*

681 [Endorsed:] U. S. circuit court. South Branch Lumber Comp'y *vs.* Geo. Ott *et al.* (In Equity.) Citation. Filed Dec. 11, 1887. H. K. Love, clerk.

This writ came into my hands for service Nov. 15th, 1887; served the same on the within-named defendants, Geo. Ott, J. B. Meyer assignee of Geo. Ott; Auguste Meyer, administratrix of Charles F. Meyer, deceased; Charles Hill, Addie Kloppenburg, Chas. Biedebecke, guard., all of Davenport, Scott Co., Iowa, by delivering to each a true copy.

Nov. 28th, 1887.

EDW. CAMPBELL, JR.,
U. S. Marshal,
By S. K. WEST, *Dept. U. S. M.*

682 *Certificate of Clerk.*

UNITED STATES OF AMERICA,
Southern District of Iowa, Eastern Division, } *ss:*

I, H. K. Love, clerk of the circuit court of the United States for said southern district of Iowa, eastern division, in pursuance of the order allowing an appeal in said cause and in accordance with the prayer of the petition for said appeal, do hereby certify the foregoing writings to be a true and correct copy and a full and complete transcript of the record, proceedings, and evidence and orders and final decree in said cause or of record in my office, including the order allowing the appeal, petition, and bond for appeal, with the approval of the same, and the original citation, as the same is required by the rules of the Supreme Court.

In witness — I have hereunto set my hand and caused the seal of said circuit court of the United States for the southern district of Iowa, eastern division, to be affixed, at Keokuk, in said district, this 9th day of January, A. D. 1888.

[Seal of the Circuit Court of the U. S., Southern Dist. of Iowa.]

H. K. LOVE,
Clerk Circuit Court,
By ERIE J. LEECH, *Deputy.*

683 In the Supreme Court of the United States.

SOUTH BRANCH LUMBER COMPANY, Appellant,
vs.
GEORGE OTT.

It is hereby stipulated and agreed that the matters contained on pages 475 to 538, inclusive, of the record herein are true copies of

the records and papers on file in the matter of the assignment of George Ott for the benefit of creditors, pending in the district court of the State of Iowa in and for Scott county, and that the same were offered in evidence on the trial of the above-entitled cause without objection by either party.

Sept. 26, 1888.

E. E. COOK, *For App'l't.*
JOHN C. BILLS,
For Appellees.

684 In the Supreme Court of the United States.

SOUTH BRANCH LUMBER COMPANY, Appellant,
vs.
GEORGE OTT, J. B. MEYER, Assignee of George Ott under General Assignment for the Benefit of His Creditors; Auguste Meyer, Executrix of the Will of Charles F. Meyer, Deceased; Charles Hill, Addie Kloppenburg, and Charles Beiderbecke, Guardian of Addie Kloppenburg, Appellees.

Appeal from the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division. In Equity.

And now comes the said appellant, by Edward E. Cook, its solicitor, and shows to the court here that in the record and proceedings aforesaid there is manifest error, in this:

I. The court below erroneously found that the general assignment from George Ott to Charles F. Meyer in the bill mentioned
685 "was not fraudulent or void for the reasons stated in the bill of complaint in this suit, and that therefore complainant is not entitled to have the same set aside or decreed void and of no effect."

II. The court below erroneously held the chattel mortgage in the bill and decree referred to from George Ott to Addie Kloppenburg created a lien and equity on the funds in the hands of the assignee for the benefit of creditors of said George Ott, "and that such lien and equity of said Addie is superior to the equity of complainant."

III. The court below erroneously decreed that *that* as to said Addie Kloppenburg and her guardian the bill of complaint herein should be and was dismissed.

IV. The finding and decree of the court below as to the validity of the general assignment of George Ott, and as to the mortgage or lien of Addie Kloppenburg is contrary to the evidence, to the law, and to equity.

EDWARD E. COOK.

Endorsed on cover: S. Iowa C. C. U. S. No. 798. The South Branch Lumber Company, appellant, *vs.* George Ott, J. B. Meyer, assignee of George Ott; Auguste Meyer, executrix of Charles F. Meyer, deceased; Charles Hill, Addie Kloppenburg, and Charles Beiderbecke, guardian of Addie Kloppenburg. Filed October 1, 1888.

FILED
NOV 16 18
JAMES H. McKE

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1891.

No. 135.

THE SOUTH BRANCH LUMBER CO.,
Appellant,

vs.

GEORGE OTT, J. B. MEYER, Assignee of GEORGE OTT, AUGUSTA MEYER, Executrix of CHARLES F. MEYER, Deceased, CHARLES HILL, ADDIE KLOPPENBURG and CHARLES BEIDERBECKE, Guardian of ADDIE KLOPPENBURG,
Appellees.

Appeal from the Circuit Court of the United States for the Southern District of Iowa.

Brief for Appellant.

F. J. SMITH, and
J. M. FLOWER,
Counsel for Appellant.

HORACE O'DONOGHUE, PRINTER, 192 SOUTH JEFFERSON STREET, CHICAGO.

estate, and by the garnishment of Charles F. Meyer, the voluntary assignee, and Charles Hill and Addie Kloppenberg, chattel mortgage creditors of the said Ott.

Thereafter upon the application of the plaintiff, the action was duly and seasonably removed to the Circuit Court of the United States, for the Southern District of Iowa, upon the grounds of citizenship, under the Act of Congress of March 3, 1875. Final judgment was entered therein, in favor of the plaintiff and against the said Ott, on the 17th day of September, 1887, for $40,261.34, and costs, and that he have execution therefor; and it was further ordered that he have *special* execution against the attached real estate, and that the action stand continued for such further proceedings, as might be proper in relation to the garnishments, or other matters involved in the attachment. (*Record, p. 237*).

Shortly subsequent to the removal, and about a year prior to the entry of said judgment, the complainant filed its bill in equity, in the Federal Court, in aid of its attachment at law then pending therein, to which suit the debtor Ott, his voluntary assignee, Meyer, and the chattel mortgagees, Hill and Kloppenberg, and her guardian, were made parties defendant.

The bill sets up, among other things, the commencement of the attachment proceeding in the State Court; its removal to and pendency in the Federal Court; the execution of a voluntary assignment by Ott to Meyer; the execution and delivery of the two chattel mortgages; the pledge and delivery of personal property and securities to sundry creditors, which immediately preceded the assignment and should be construed as a part thereof; that the mortgages were fraudulent, both in law and fact; that the assignment and the said pledges and transfers should be

construed together as constituting one instrument, and the same be declared void as an assignment with preferences; that the said Meyer, as assignee, was in possession of the assigned property and converting the same into money, and threatened to distribute the proceeds among creditors; and that the holders of the chattel mortgages had commenced proceedings to foreclose the same.

The complainant prayed for an injunction, a receiver, and a decree setting aside and annulling the assignment, and mortgages, as fraudulent and void, and for other relief.

During the pendency of the suit, Charles F. Meyer, the assignee, died, and J. B. Meyer, as his successor, and Augusta Meyer his executrix, were made parties defendant. No receiver was ever appointed, but the assignee of Ott was permitted to convert the assets, and retain the proceeds pending the litigation.

All of the defendants appeared and answered, and after a full hearing the Circuit Court entered its final decree, finding that it had jurisdiction of the suit, and the matters in controversy; that the general assignment was not fraudulent or void, and ought not to be set aside; that the mortgage to Hill was fraudulent in fact, as to the complainant, who was entitled to receive from the assignee such sum as the said Hill would otherwise have been entitled to receive, being $3,225.00; that the Kloppenberg mortgage was a valid lien upon the funds in the hands of the assignee, and entitled to payment; and that as to her, the bill should be dismissed; that the allegations of the bill with reference to the attachment and garnishee proceedings were true, and that the assignee had in his hands a sum of money exceeding $35,000.00. (*Record, pp. 346 and 347.*)

From this decree the complainant has prayed and perfected its appeal.

STATEMENT OF FACTS.

The material facts in this case as shown by the record, which may be regarded as admitted or fairly established are as follows:

The South Branch Lumber Company, is an Illinois corporation, and has been for many years a wholesale lumber dealer at Chicago, and the defendant George Ott, for nearly thirty years was a manufacturer of doors, sash, etc., at Davenport, Iowa.

Business transactions between these parties commenced in or prior to 1882, and continued down to April, 1886, when Ott suspended business and made an assignment, at which time his indebtedness to the Lumber Company exceeded thirty-seven thousand dollars. During this period the Company asked for and obtained from its debtor statements of his financial condition, as well as reports from the various commercial agencies, all of which, prior to 1886, showed a very large surplus of assets over liabilities, and that Ott was entitled to a fair line of credit. One of these statements, bearing date January 23rd, 1885, shows a surplus in his business of about $93,000. (*Record, pp. 117 and 161.*)

A statement made and bearing date on the 29th of March, A. D. 1886, and forwarded by Ott to the Lumber Company on the 8th of April, 1886, shows an apparent surplus in the business of only about $23,500, a loss in a little over one year of $70,000. (*Record, pp. 164-5-6.*)

No satisfactory explanation is given for this large discrepancy, and there seems to be no reasonable basis upon which it can be accounted for, except the presumption, which naturally arises and is fully sustained by the proof, that in the statement of January, 1885, Ott overstated his assets, or understated his liabilities, or did both.

The latter is probably the case, as his indebtedness in 1886 was $107,000.00 greater than in 1885, while the increase of assets was only $37,000.00, which was caused in great part by increased valuations placed upon the factory, warehouse and quarry.

See comparative statement (*Record, pp. 165–166*).

On the 20th day of February, 1886, Ott executed two chattel mortgages both of which bear date on that day, and were drawn by and acknowledged before Bleik Peters, his attorney. Each of said mortgages was given to secure a note of even date therewith, payable one day after date, with interest at seven per cent., and covered all of the merchandise in the store building, and all of the lumber and manufacturing material at the factory of said Ott, then on hand, as well as all that might thereafter be purchased to replenish said stocks, reserving the right to sell and manufacture said stocks in the ordinary course of business. The mortgages contained the usual provisions authorizing the mortgagees to take possession in case of default, removal of property from the county, etc., but none requiring the mortgagor to apply the proceeds of sales, or any portion thereof, in discharge of his indebtedness. (*Record, pp. 110 and 259.*)

One of the said notes and mortgages for $3,000.00 was given to the defendant, Charles Hill, to secure him against loss upon his liability as guarantor or endorser of Ott's paper to the First National Bank at Davenport, and

the other, for $3,500.00, to Addie Kloppenberg, a granddaughter and ward of Ott's, to secure the repayment of that sum, alleged to have gone into and been used by Ott, the guardian, in his business.

These securities were retained by Ott for several days after they were executed. The mortgage to Hill was delivered to him by Ott with a request not to record it, as it would injure his credit, to which Hill agreed. The mortgage to Kloppenberg was delivered by Ott to his own attorney, Peters, at the latter's suggestion, with directions to put it in his safe, and not record it, as it would hurt his credit.

Ott's deposition (*Record, p. 282*).

Hill's deposition (*Record, p. 258*).

Peters' deposition (*Record, p. 50*).

Between the date of these mortgages, February 20th, 1886, and the date of the assignment, April 27th, 1886, Ott's purchases of merchandise amounted to over $60,000.00 (*Record, p. 112*), of which amount nearly $9,000.00 worth was purchased from the South Branch Lumber Company upon credit. (*Record, pp. 130 and 131*).

As judgment was rendered in the U. S. Circuit Court in favor of the Lumber Company, and against Ott, in the action at law, for the full amount of the plaintiff's claim, and sustaining the attachment, from which no appeal has been taken, it may be assumed for the purposes of this case, as between those parties, that it is judicially settled and determined, that the entire indebtedness was incurred for property obtained under false pretenses, or that Ott had disposed of his property, with intent to defraud his creditors. (*Record, pp. 221 and 237*).

On the 12th day of April, 1886, and within a day or two after receiving Ott's financial statement of March 29th, Mr. Beidler, the secretary of the Lumber Company, came to Davenport to get some security for the plaintiff's large claim, in which effort he was unsuccessful. It does not appear that he threatened to bring any suits, although he did insist that the indebtedness should be reduced.

Ott does not appear to have consulted a lawyer in relation to his business affairs, so far as the record shows, until the morning of April 26th. (*Record, p. 94*) Within twenty-four hours thereafter, he had made an assignment, and his assignee was in possession of his assets. During that period of time, it is a fair presumption that no steps were taken or acts done by him, except under the advice of his attorney, and that whatever so closely preceded the assignment was done in contemplation of it. On the 26th of April, after consulting with his lawyer, Ott notified Hill to record his mortgage, and directed Peters, his attorney, to record the Kloppenberg mortgage. It is a singular coincidence that these mortgages were both filed for record just at the close of office hours, a minute apart—the Kloppenberg mortgage being indorsed at six minutes past five o'clock, p. m., and the Hill mortgage at seven minutes past. (*Record, pp. 110 and 261.*)

Security was also given upon the 26th by drafts upon customers to T. W. McClelland & Co. for $660 80, and to Chris. Mueller to the amount of $1,239.46. These were unaccepted drafts and were taken as collateral and not in payment. Notice of these drafts was mailed to the drawees, upon the day that they were made. Nothing was due upon the debt to McClelland at the time the security was given. That account, by its terms, would not

become payable until June 1, 1886. (*Record, pp. 185, Ex. A. 277 and 309.*)

On the morning of the 27th Ott pledged four car loads of glass to the Railroad Company as security for the payment of freight due. The instrument is in the handwriting of his attorney. (*Record, p. 334.*)

The assignment was filed on the same morning, at eight o'clock and fifty-seven minutes. The controversy, as the case presents itself in this court, is upon the validity of the assignment under the statutes of Iowa, and whether the Kloppenberg mortgage, either as a part of or independent of the assignment, is a valid instrument as to creditors.

STATEMENT OF ERRORS.

1. The court below erroneously found that the general assignment from George Ott to Charles F. Meyer, in the bill mentioned, "was not fraudulent or void for the "reasons stated in the bill of complaint in this suit, and "that therefore complainant is not entitled to have the "same set aside or decreed void and of no effect."

2. The court below erroneously held the chattel mortgage in the bill and decree referred to from George Ott to Addie Kloppenberg created a lien and equity on the funds in the hands of the assignee for the benefit of creditors of said George Ott, "and that such lien and equity of said Addie is superior to the equity of complainant."

3. The court below erroneously decreed that, as to said Addie Kloppenberg and her guardian the bill of complaint herein should be and was dismissed.

4. The finding and decree of the court below as to the validity of the general assignment of George Ott, and

as to the mortgage or lien of Addie Kloppenberg, is contrary to the evidence, to the law, and to equity.

BRIEF AND ARGUMENT.

Upon the record and errors assigned, we submit the following propositions:

1. A conveyance of property, fraudulent in law or in fact, may be successfully attacked in Iowa by attachment and garnishment in either the State or Federal Courts.

2. A bill in equity will lie in aid of an attachment at law, for the purpose of removing obstructions to the collection of a judgment, when obtained, and of preserving the fund in controversy.

3. A chattel mortgage, which by agreement between the parties, is not to be recorded, for fear of injuring the credit of the mortgagor, is void as to subsequent creditors.

4. Under the Iowa statute, a voluntary assignment for the benefit of creditors, containing preferences, is void. Preferences made in separate instruments shortly prior to, and in contemplation of the making of a voluntary assignment, followed by such assignment, will be construed as one instrument, and held void.

I.

METHOD OF ATTACHING FRAUDULENT CONVEYANCES.

The Iowa statute on the subject of attachments and garnishment authorizes proceedings in certain instances upon claims not due.

The statutory provision is as follows:

Sec. 2956. The property of a debtor may be attached, previous to the time when the debt becomes

due, when nothing but time is wanting to fix an absolute indebtedness, and when the petition, in addition to that fact, states:

1. That the defendant is about to dispose of his property, with intent to defraud his creditors; or,

2. That he is about to remove from the State, and refuses to make any arrangements for securing the payment of the debt when it falls due, and which contemplated removal was not known to the plaintiff at the time the debt was contracted; or

3. That the defendant has disposed of his property, in whole or in part, with intent to defraud his creditors; or,

4. That the debt was incurred for property obtained under false pretenses.

Rev. Stat. Iowa, sec. 2956, p. 735.

The attachment sued out by the appellant in this matter was upon a claim in great part not due, and was based upon the third and fourth grounds set forth in the above section, which were satisfactorily proven upon the hearing and sustained by the court.

The mode of serving an attachment is prescribed by the statute in the following language:

Sec. 2966. If, after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the same in an adjoining county, within twenty four hours after removal.

Rev. Stat. Iowa, sec. 2966, p. 738.

The investigation of fraudulent transfers or concealment of personal property by means of an attachment, and the service of garnishee process in lieu of actual

seizure, seems to have been a favorite method of the Iowa courts of reaching results, from their organization down to the present time. The decisions are quite numerous, but it is hardly necessary to enter upon an extended discussion of a practice so well settled. It will be quite sufficient to call attention to two or three of the cases supporting this position.

Bebb v. *Preston*, Garnishee, 1 Iowa, 460.

Brainard v. *Van Kuran*, 22 Iowa, 261.

Sperry v. *Gallagher*, 41 N. W. Rep. 586; 77 Iowa, 107.

The Federal Court in Iowa has followed the decisions of the State Court in this respect.

See *Kohn* v. *Ryan et al.*, 31 Fed. Rep., 636.

In *Bebb* v. *Preston*, *supra*, the plaintiff commenced an action of attachment against Hatheway and Parkhurst, and garnished their voluntary assignee, Isaac M. Preston. In the lower court judgment was entered in favor of the garnishee, and the creditor appealed. In the Supreme Court a motion was made to dismiss the appeal, upon the ground that the judgment was not such an one as would warrant an appeal. The motion was overruled, and the judgment reversed.

The court in its opinion says, page 467: "This pro-" ceeding is well adapted, not only to inquire into the " indebtedness, but to investigate fraud or concealment in " the transfer of personal property, and in assignments for " the benefit of creditors. It is a sort of bill in equity, but " still more penetrating. The garnishee may not only be " asked the general questions suggested by the statute, " but any others tending to reveal the true character and

"consideration of the transaction. Of course it is not "intended to say that *no* question or inquiry will be im- "proper, but the above remark is made as true in general. "It is said this is only a part of the process of attachment. "That is true in this case. But it may arise under an "execution also, and then it becomes more independent of "the mere proceedings in the particular action. It is true, "it must have connection with an action commenced, or "judgment recovered, and then it becomes almost an ac- "tion of itself. It is such in substance, though not in form. "If it must have a name, we will call it a special pro- "ceeding."

In *Sperry* v. *Gallagher*, *supra*, which was an attack upon a voluntary assignment by attachment, and service of notice of garnishment upon the assignee, the court held the assignment void, and says in its opinion, page 587: "As the assignment was void on its face, as to those cred- "itors who repudiated it, we think it is competent for the "court to so declare, upon the answer of the garnishee, "by which it clearly appeared that he held the property "and estate of the insolvent by no legal right, as against "creditors who did not assent to the assignment. Af- "firmed."

In *Brainard* v. *Van Kuren*, *supra*, the court held that a creditor of a fraudulent mortgagor, may, instead of proceeding in equity to set aside the mortgage, or levying upon the property and claiming the right to sell it, reach the property included in such mortgage by garnishing the mortgagee.

The case of *Kohn* v. *Ryan*, *supra*, commenced in the Federal Court, was an attack upon a voluntary assignment. A writ of attachment was sued out and served by garnishing the assignee. A motion to discharge the

garnishee was overruled. In his opinion Judge Shiras uses the following language (p. 639): "That under the "State practice a judgment or attachment creditor may "question the validity of the assignment by either levying "his writ upon the assigned goods, or by garnishing the "assignee, will not be disputed. Why may not the same "course be pursued in the United States Court?"

Jurisdiction of the parties to, and the subject matter of this, having been obtained in the State Court, by proper process and service thereof, it necessarily follows that a like jurisdiction obtains in the Federal Court upon a lawful removal of the same thereto.

II.

A BILL IN EQUITY WILL LIE IN AID OF AN ATTACHMENT AT LAW.

The bill in this cause sets forth strong grounds for the relief sought thereby, which was to preserve and hold intact the property in controversy, or the proceeds thereof, until it could be judicially ascertained and determined who was entitled to the same. Subsequently to the garnishment, which operated to create as effectual a lien as an actual seizure would have done, and after the removal to the Federal Court the two chattel mortgagees commenced actions in the State Court for the foreclosure of their chattel mortgages, claiming payment of the same from the assignee, who was in possession of the mortgaged property. A large number of claims had been proved up under the assignment, and the time for declaring dividends, which the assignee intended to make, was close at hand. The assignee was not personally financially responsible, and his sureties upon his bond could not

be held liable to the complainant. It was quite apparent that unless the complainant could invoke the equity power of the court, it was in great danger of losing the benefit of its legal proceedings. A clear case was presented for equitable relief, unless the fact that the plaintiff's claim had not been reduced to a judgment was an insuperable objection. That a bill will lie in aid of an execution at law, to set aside fraudulent conveyances and obstructions, seems to be well settled.

3 Pomeroy's Eq. Juris. sec. 1415, p. 463 and note 5.

Whether a bill will lie for the like purpose in aid of an attachment at law, is not so well settled — the decisions being conflicting. Some of the State Courts hold that such a bill will be maintained, and others that it will not.

The better rule, which is supported by the weight of authority, seems to be that a creditor's suit may be maintained to reach real estate when a specific lien is created; that an attachment constitutes such a lien as to furnish ground for equitable interference, to remove fraudulent obstructions or improvements on the property, real or personal, attached, without the requirement of a judgment obtained, or the steps subsequent thereto, necessary in ordinary creditors' suits.

It has been so held by the courts of last resort in the States of New York, New Hampshire, New Jersey, Texas and California, and otherwise in Maine, Kansas, Illinois and Missouri.

3 Pomeroy Eq. Juris., sec. 1415, p. 465 and note.

The same doctrine is fully sustained by the Supreme Court of the State of Ohio, in the case of *Wood* v. *Stan-*

berry, 25 Ohio St. 150, and is followed and approved by the late Justice Matthews, in the case of *Perry* v. *Sharpe*, decided by him in the Circuit Court for the Southern District of Ohio, and reported in 8 Federal Reporter, page 15.

In the opinion in the latter case, the court say (p. 25):

"So far as the objection now under consideration is "concerned, that there is open to the complainants an "adequate remedy at law, the case of *Wood* v. *Stanberry*, "25 Ohio St. 150, seems conclusive. It was there adjudged "that, 'where a sheriff has in his possession goods and "chattels, by virtue of a levy under an execution issued "upon a *void* judgment, and afterward levies, subject to "his former levy, an order of attachment in favor of the "creditors of the judgment debtor upon the same property "and proceeds, or threatens to proceed, under the direction "of the plaintiff in execution, to sell the same for the "purpose of applying the proceeds upon the execution, "the plaintiffs in attachment may restrain the sale by "injunction.'"

In meeting the objection urged here, the court say, p. 150:

"The remedy which an injunction affords them is "complete, and no other process or proceeding is adequate "to the preservation of their rights, or their just compen-"sation for injuries, if the sale under the execution is per-"mitted. They cannot appear in the case of *Stanberry* "v. *Purviance* and ask the court to recall the execution, "for the reason that they are not parties therein; and for "the same reason they cannot, upon the return of the "execution, ask the court to control the proceeds of the "sale for their benefit; nor can they, by proceedings in "error, stay the execution or reverse the judgment upon

"which it was issued. They cannot recover the possession of the property attached from the sheriff — the possession is rightfully in him — nor can they maintain trespass against him, for the reason that the execution, being regular on its face, is his justification. If the property be sold under the execution and delivered to purchasers, an order of sale under their attachment will be fruitless. An action against the purchaser, if insolvent, will afford no redress, and, if solvent, will impose burdens and expenses upon them for which no compensation can be made. In short, there is no adequate remedy, and therefore the case is a proper one for an injunction."

It is true, in that case the execution was declared to be *void*, while here it is only *voidable*. But that only furnishes an additional ground for independent equitable interference, as the equity asserted by the complainants, while it is sufficient, if maintained, to avoid the levy of the execution as against their claim, could not be established and vindicated in any other mode than by a bill in chancery. The grounds, therefore, for maintaining the injunction in the present case are stronger than in the case just cited.

The Iowa courts seem to have had no difficulty in dealing with this subject.

In the case of *Van Patton* v. *Burr*, 52 Iowa, p. 518, the creditors commenced a suit in equity to set aside a voluntary assignment, and certain chattel mortgages executed by the debtor, and subject the property covered thereby to the payment of their claim upon which the action of attachment had been commenced. Upon demurrer to the petition, this form of proceeding was sustained and the conveyances were held void.

The same practice was followed in the case of *Farwell* v. *Jones*, reported in 63 Iowa, p. 316, in which there seems to have been an actual seizure of the property, and the taking of the same from the possession of the assignee. This, however, would not affect the equitable rights of the parties, in view of the fact that a garnishment in Iowa is just as effectual in establishing the lien of an attachment as seizure of property.

In entertaining jurisdiction of this suit, the Federal Court follows the practice of the courts of Iowa, as did Mr. Justice Matthews those of Ohio, in the case of *Perry* v. *Sharpe*, above cited.

Much time seems to have been given in the court below as to whether there might not be a conflict between the Federal and State Courts upon the matter of jurisdiction.

It is a little difficult to see just how this question can arise, but if it be in the case, and require discussion, we are content to let it rest upon the reasons given and the authorities cited by Judge Love in his opinion filed in this cause.

The jurisdiction of the parties and of the subject matter was obtained in the State Court by the attachment proceeding, which passed to the Federal Court upon the removal of the cause. From the time of the removal the latter court could do whatever the former would have had a right to do, had there been no removal. The bill in equity is a mere auxiliary to the action at law and dependent upon it, and, under the Iowa authorities, would undoubtedly lie in the State Courts, and no good reason can be assigned why such a proceeding should not be entertained by the Federal Court.

FRAUDULENT MORTGAGES.

The chattel mortgages to Hill and Kloppenberg are attacked upon two grounds:

1st. As being fraudulent in fact, as to subsequent creditors, because they were withheld from the record so as not to injure the credit of the mortgagor, pursuant to an alleged agreement between him and the mortgagees.

2d. Because, in legal effect, they are part of an assignment with preferences, made by the mortgagor, which instrument is void under the Iowa statutes.

The Hill mortgage has been held void upon the first ground, and the court below has decreed that the complainant, The South Branch Lumber Company, is entitled to receive the sum to which Hill would have been entitled had the mortgage been held valid. This recovery is based upon grounds entirely independent of the question as to whether the assignment is valid or invalid. The rights of none of the other defendants are affected by this part of the decree, and as Hill has no right of appeal, or, if so, has not appealed, it follows that that controversy is not before this court for determination. What effect the giving of this void mortgage and similar transactions may have upon the validity of the assignment, is quite another question, and will be discussed in connection with that branch of the case.

The circumstances attending the giving of the Kloppenberg mortgage are somewhat peculiar. It was made with the intention of securing a debt due from Ott to the estate of his grand-daughter and ward, a young girl about fourteen years of age. He could not with propriety make a mortgage from himself as an individual to himself, as guardian, and so he made it to the minor. He retained it in his possession for several days and then delivered it

to Peters, his own attorney, so that, as the attorney says (*Record, p. 94*), "There was more appearance of their being delivered, because the maker of the mortgage was the guardian also." It was to be held by Peters until Ott instructed him to put it on record. This instruction was not given until the afternoon of the 26th of April, the day before the assignment. Under the circumstances it would seem that the possession of Peters was that of Ott, and that the delivery to him of the mortgage to be held subject to the instructions of the mortgagor, was in no sense a delivery to the mortgagee, or to any one authorized to take delivery for her. At any time before the recording, Ott could have recalled the mortgage, and up to that time, it might be held as not good, even as between the parties, because of non-delivery. Under such circumstances we do not claim that this security is fraudulent in fact, because of any assent expressed or implied upon the part of the infant mortgagee to any fraudulent schemes of the mortgagor, but we do insist that it is void as to the appellant, for the reason that it is a part of the assignment which is made void by the Iowa statute.

IV.

THE ASSIGNMENT.

The provision of the Iowa statutes under which it is claimed the assignment in controversy is void, reads as follows:

"No general assignment of property by an insolvent, "or in contemplation of insolvency, for the benefit of "creditors, shall be valid, unless it be made for the ben-

FRAUDULENT MORTGAGES.

The chattel mortgages to Hill and Kloppenberg are attacked upon two grounds:

1st. As being fraudulent in fact, as to subsequent creditors, because they were withheld from the record so as not to injure the credit of the mortgagor, pursuant to an alleged agreement between him and the mortgagees.

2d. Because, in legal effect, they are part of an assignment with preferences, made by the mortgagor, which instrument is void under the Iowa statutes.

The Hill mortgage has been held void upon the first ground, and the court below has decreed that the complainant, The South Branch Lumber Company, is entitled to receive the sum to which Hill would have been entitled had the mortgage been held valid. This recovery is based upon grounds entirely independent of the question as to whether the assignment is valid or invalid. The rights of none of the other defendants are affected by this part of the decree, and as Hill has no right of appeal, or, if so, has not appealed, it follows that that controversy is not before this court for determination. What effect the giving of this void mortgage and similar transactions may have upon the validity of the assignment, is quite another question, and will be discussed in connection with that branch of the case.

The circumstances attending the giving of the Kloppenberg mortgage are somewhat peculiar. It was made with the intention of securing a debt due from Ott to the estate of his grand-daughter and ward, a young girl about fourteen years of age. He could not with propriety make a mortgage from himself as an individual to himself, as guardian, and so he made it to the minor. He retained it in his possession for several days and then delivered it

to Peters, his own attorney, so that, as the attorney says (*Record, p. 94*), "There was more appearance of their being delivered, because the maker of the mortgage was the guardian also." It was to be held by Peters until Ott instructed him to put it on record. This instruction was not given until the afternoon of the 26th of April, the day before the assignment. Under the circumstances it would seem that the possession of Peters was that of Ott, and that the delivery to him of the mortgage to be held subject to the instructions of the mortgagor, was in no sense a delivery to the mortgagee, or to any one authorized to take delivery for her. At any time before the recording, Ott could have recalled the mortgage, and up to that time, it might be held as not good, even as between the parties, because of non-delivery. Under such circumstances we do not claim that this security is fraudulent in fact, because of any assent expressed or implied upon the part of the infant mortgagee to any fraudulent schemes of the mortgagor, but we do insist that it is void as to the appellant, for the reason that it is a part of the assignment which is made void by the Iowa statute.

IV.

THE ASSIGNMENT.

The provision of the Iowa statutes under which it is claimed the assignment in controversy is void, reads as follows:

"No general assignment of property by an insolvent, "or in contemplation of insolvency, for the benefit of "creditors, shall be valid, unless it be made for the ben-

"efit of all his creditors in proportion to the amount of "their respective claims."

Iowa Rev. Statutes, Sec. 2115, p. 569, Title, "Of Assignments for Creditors."

In its consideration of the above section we assume that this court, in accordance with its well established rule, will adopt the construction placed upon it by the Supreme Court of the State of Iowa, and we shall confine our discussion to the decisions of that court, which have been very numerous, and are not entirely reconcilable.

It may be stated, however, as fairly well settled by the general current of authority in Iowa, that where an insolvent debtor, in contemplation of making a voluntary assignment for the benefit of creditors, gives security to one or more of his creditors by separate instruments, followed by an assignment, all of said instruments will be construed together as an assignment with preferences and therefore void under the statute.

Cole v. *Dealham*, Garnishee, 13 Iowa, 551.
VanPatten v. *Burr*, 52 Id. 518.
Farwell v. *Jones*, 63 Id. 316.
Perry v. *Vezina*, 63 Id. 25.
Gage v. *Parry*, 69 Id. 605.

In *Cole* v. *Dealham*, *supra*, "Where a debtor con- "veyed a portion of his property to creditors by mortgage, "without their knowledge, and at the same time conveyed "the remainder to a trustee, by an assignment for the "benefit of his creditors, all of which was done with a view "to insolvency, it was held a general assignment in which "creditors were preferred and therefore void." It was further held that, "A debtor may in good faith make a

"partial assignment preferring creditors; but when the "whole transaction assumes the character, and is in legal "effect a general assignment, he can give no preference."

The case of *Van Patten* v. *Burr*, *supra*, fully sustains this view of the case. The facts in this case which were sufficient to sustain the averments in the petition, that the execution of the two chattel mortgages, and the assignment, was a contrivance to enable the debtor to prefer certain creditors, and evade the statute, were admitted by the demurrer. The transactions were held to constitute one transaction, an assignment for the benefit of creditors, which was invalid.

In the case of *Perry* v. *Vezina*, *supra*, where it was *conceded* that the debtor did *not* at the time he gave a mortgage, *contemplate* making an assignment, but in fact did make one three hours afterwards, it was held that the mortgage was not a part of the assignment, and that the assignment was not void.

In the case of *Farwell* v. *Jones*, *supra*, it was held not to be within the rule laid down by the court, *Van Patten* v. *Burr*, 52 Iowa, 518, and other cases determined by the court, because the evidence was *positive and direct*, that when Jones, the debtor, made the mortgages he did not contemplate making an assignment.

To the same effect is the decision in the case of *Gage* v. *Parry*, in which the court says: "The *undisputed* "evidence is that Morris & Humphreys did not contem- "plate making a general assignment when they executed "the other instruments, but that they determined to make "an assignment when advised, after the execution of the "mortgages, that the recording of these instruments would "probably have the effect to cause the unsecured creditors "to institute attachment suits against them. In this re-

showed insolvency, and which showed an enormous increase of liabilities over assets, as compared with his statement of the preceding year. At this meeting Beidler insisted that the debt must be reduced, although it does not appear that he threatened suit, although the claim was so large and the circumstances were such that Ott might reasonably apprehend a vigorous effort to enforce collection in the near future, unless the amount was materially lessened. In the forenoon of April 26th Ott evidently felt that a crisis had been reached in his affairs, and consulted a lawyer for the first time so far as known (*Record, p. 294*), and from thence on was actively engaged in putting his affairs in order.

This is what he did on that day:

1st. He told Peters, his attorney, to record the Kloppenberg mortgage, which had never been delivered, and it was filed for record at six minutes past five p. m. (*Record, p. 51.*)

2nd. He told him that he might have his mortgage, given to secure him as endorser, recorded, which was filed for record at seven minutes past five. (*Record, pp. 283, 284, 261.*)

3rd. He directed his bookkeeper to make out and give to Christ. Mueller three drafts on customers for $1,239.46 as collateral security for a debt owing to him, which drafts were delivered by the clerk. (*Record, p. 308.*)

4th. He personally delivered to T. W. McClelland, for T. W. McClelland & Co., a draft upon one of his customers for $660.80, as collateral security for *a debt not then due*, with a statement that he was in trouble and did not propose to go back on his friends. (*Record, p. 170.*)

On the morning of the 27th of April, at or about the time of executing the assignment, Ott, by an instrument

in writing, drawn up by his attorney, who drew the assignment, pledged four car-loads of merchandise for the payment of a freight bill of $826.57. (*Record, p. 334.*) (See p. 33)

Whether this reached the freight agent before the assignment was recorded cannot be determined, but the security was recognized by the assignee and the debt paid.

All of these transactions were purely voluntary upon the part of Ott, as much so as the assignment itself. No compulsion was used or even threatened *by any* of the creditors who were preferred to obtain these securities. It is vastly more reasonable to suppose that these preferences were given because Ott was contemplating a voluntary assignment than that the assignment was made because he had voluntarily given the preferences. This is not a case where a debtor under the persuasion or compulsion of a creditor, or his attorney, has in good faith secured a debt, and after having done so, realized for the first time that his ill-advised action renders an assignment necessary. It is only in such cases, and where the proof was positive and direct, that the same courts have refused to read into an assignment, transactions in the way of preferences, which immediately precede its execution. They have even gone so far as to hold, in more than one instance, that a series of voluntary transactions or a written instrument by a debtor, disposing of his entire estate, where no assignment in form is executed, will constitute an assignment with preferences, and be declared void, as in the case of *Burrows* v. *Schudorff*, 8 Iowa, 96, where the transaction was made up of a series of mortgages; or in *King* v. *Gustafson*, 45 N. W. Rep. 565, where a bill of sale provided for the payment of creditors in classes, which was held to be an assignment, and void on its face.

The security given by Ott on the morning of the 27th is enough of itself without reference to the transactions of the previous day to avoid the assignment. If that instrument had contained a provision that all claims due the Rock Island Railroad Company should have priority it would be held void on its face. Can such a transaction be made valid by making two instruments at the same time, one of which gives a lien to a favored creditor, and the other provides for the equitable distribution of the balance of the estate? And yet this is just what was done, and the court is asked to sustain the transaction, which taken as a whole is a violation of the statute.

There is no proof, and no claim even, that Ott did not intend to make an assignment when this paper was sent to the freight office of the Rock Island Company.

As to questioning his intention, which is a matter concerning which no one but himself could directly testify, the evidence is quite concise, and is embraced in the questions and his answers thereto, as follows:

Direct examinations:

"64. You may state when you made up your mind "to make an assignment. A.—On the 27th of April, in "the morning." (*Record, pp. 282 and 283.*)

"76. Did you tell Charles Hall and Bleik Peters that "they might record their mortgage before your assign-"ment? A.—Yes.

"77. When did you tell them so? A.—On the "26th.

"78. Why did you tell them so on the 26th? A.— "I have no reason. I feel on the 26th that there have to "be something done, you know."

On cross-examination:

"103. When did you first consult Mr. Bills about "your affairs? A.—The 26th of April, 1886.

"104. That was the first time you talked with him "about your condition? A.—Yes, sir; it was for me a "pretty hard thing to talk over this matter, you know.

"105. About what time in the day did you first see Mr. "Bills about it (the assignment). A.—I believe it was 9, "10 or 11; I can't tell. I was so excited I could not tell "particularly what time.

"106. He begun preparing papers that afternoon, "did he? A.—I believe not, for the reason I no make my "mind up.

"107. What time did you meet Mr. Bills at his office "the next morning? A.—On the 27th?

"108. Yes. A.—I believe very near eight o'clock, "maybe it was a little sooner. I set there before he came "—was not a great deal sooner.

"109. You feel sure it was after eight o'clock in the "morning? A.—Was not after. I don't think it was "sooner.

"110. You signed exhibit "A" to Mr. White's depo-"sition? A.—Yes.

"111. Who wrote it? A.—Mr. Bills; and I signed "name to it." (*Record, p. 295.*)

Ott is asked certain other questions on page 293, as to his condition of mind on February 20th, when the chattel mortgages were executed, and as to some payments of money to employes on April 26th, none of which are relied upon to avoid the assignment, or claimed to be a part of it.

The making of preferences to Mueller and McClelland, on the 26th, and Ott's object in making them, are

carefully avoided in his examination, as is also the question as to what action he contemplated at that time. The language of the statute is "in contemplation of insolvency." The real question is, Had Ott *in contemplation* the making of an assignment at the time of these transactions? and not whether he had made up his mind to do so.

Some men are so constituted that they do not regard their minds as made up so long as the opportunity to change their views remains, or until matters have proceeded so far that such change is impossible. Ott must have looked at the matter in this light, and for the purposes of this case concluded that his mind was made up when he had actually executed the assignment, and not before; for when he is asked whether the papers were being prepared on the afternoon of the 26th, he testifies simply to a belief that they were not, because he hadn't yet reached a conclusion; that is, made up his mind. The assignment itself, with its *three pages* of carefully prepared schedules of assets and liabilities (*Record pp. 251–4*) is a flat contradiction of and sufficient to discredit his testimony. So complete a list of creditors, with a list of their addresses and the amounts due to each, could never have been prepared on the morning of the 27th of April so as to be filed before 9 o'clock.

Conceding, however, that Ott intended to be understood as testifying that he had no thought of making an assignment until the morning of the 27th, we insist that his testimony is so thoroughly impeached by other witnesses, as to other material matters in the case, as to justify us in the claim which we now make that his testimony on the subject of his intent is entitled to no consideration and should be wholly disregarded.

As to the causes of the assignment, Heesch, the book-

keeper, testifies to Ott's statements to him of Beidler's refusal to grant extensions, and his statement to Ott of the bank's refusal to discount a certain class of paper, and gives as the reason that led to the assignment, as he understood it, the refusal of the South Branch Lumber Company preventing any renewals on paper, and the bank's refusal to discount such an extent of unaccepted papers. (*Record, pp. 74, 82.*)

McClelland testifies that when Ott gave him his security, which was after three o'clock in the afternoon of the 26th, he said that he was in trouble and expected to be in trouble, and "he didn't propose to go back on his friends;" that "the South Branch folks were acting very mean towards him." (*Record, pp. 17, 79.*) This testimony is fully corroborated by that of Gartside. (*Record, pp. 187, 190.*)

Ott explicitly denies that he made any such statement to McClelland, and limits the interview to the delivery of the draft, and the statement upon his part, "Here is a draft for that wire you bought for me," "Give me credit for it." (*Record, pp. 309, 317, 320.*) And he positively states that neither the action of the bank nor that of Beidler had anything to do with his assignment, and that *no man was pushing him.* (*Record, p. 307.*)

The recklessness of Ott is shown by his statement that he bought machinery the preceding year to the amount of about $11,000 (*Record, p. 299*), when his own books show that the total amount for the preceding twenty-eight months was less than $3,500. (*Record, p. 107.*)

Ott's statement, under oath, that Beidler offered him $10,000 or $15,000 for his assistance in this suit is absolutely denied by Beidler. (*Record, pp. 319, 321, 334.*)

Such a proposition is so improbable as to make the testimony incredible and scarcely worth a denial.

The untruthfulness of Ott is further shown by his statement to Beidler, on April 12th, that he had given no mortgages—a statement which he does not attempt to deny. (*Record, p. 158.*)

It should also be borne in mind that the court below, by its judgment in the attachment action, has judicially determined that Ott made false statements for the purpose of obtaining credit, and fraudulently contracted the indebtedness to complainant. Such a result is entitled to a good deal of weight in passing upon the credibility of Ott as a witness.

Moreover, his own statements are so inconsistent and contradictory in many instances, as to greatly weaken the force of his testimony, even though none of it had been positively contradicted by other witnesses.

In concluding this branch of the argument, we desire to call the attention of the court to the case of *Bock* v. *Perkins*, 28 Fed. Rep. p. 16.

The facts in that case were as follows: A debtor on the 18th of a given month was aware of his insolvency. On that day he executed or rather signed and acknowledged a deed to his wife and a mortgage to his ward, i. e., a minor, of whom he was guardian. The mortgage he kept in his own possession as guardian of his ward. (In our case the mortgage to the ward was held by Ott several weeks, and then was put into the safe of the attorney for Mr. Ott, to be held subject to the maker's order. Peters' evidence, *Abstract, p. 60.*) On the 20th, two days after the execution of the mortgage, he made an assignment under the Iowa law, and mortgage being placed upon the record prior to the assignment. The court says:

BREWER, J.: "I believe, then, his testimony is that "he did not intend to make an assignment—had not made "up his mind to make an assignment—until the 19th; at "any rate, until after he had executed his deed and mort "gage. Now, the instruction given was to the effect that "where a party becomes conscious of his insolvency—of "his inability to pay all his creditors in full—and has in "contemplation the disposition of his property, and, in pur- "suance of that purpose, makes to-day a deed and to-mor- "row an assignment, they are to be treated as part and "parcel of the same transaction, and that, notwithstanding "he may not at the time of the deed have determined upon "the assignment as the ultimate act. The testimony fully "brought that state of affairs before the jury, and before the "court; that the man was insolvent; that he was conscious of "his insolvency; knew he was unable to pay all his creditors "in full, and contemplated some disposition of his entire "property. In pursuance of that he had deeded to one "creditor and mortgaged to another, and within two days "executed the assignment. Under these circumstances it "seems to us that they are justly to be treated as part "and parcel of the same transaction. A debtor cannot "under the laws of Iowa respecting preferences, by one "instrument and another, secure this and that creditor, "when all the while there is before his mind the certainty "that he has got to make some disposition of his property "because of the pressure of his creditors, and only when "he has secured the friendly creditors, then turn over by "valid assignment the balance of his property."

In this case, precisely as in the one now under consideration, there are a series of voluntary acts, evidenced by separate instruments, which in their effect operated as a transfer of all of the debtor's property, with preferences

as to some of them. Why should not the result be precisely the same, as though all of the transactions and preferences had been incorporated into a single instrument?

The testimony of Ott as to his secret intent, wholly unsupported, inconsistent with itself, and contradicted, as to material matters, by the testimony of other witnesses, is entitled to no weight as against the irresistible conclusion to be drawn from the series of acts and transactions which preceded and culminated in a voluntary assignment within the space of twenty-four hours.

Some stress is laid by the learned judge who decided this case in the court below upon the inequitable result of holding the Ott assignment void, as it would give to the attachment creditors the entire estate. Undoubtedly it would be much more satisfactory to a Court of Equity, had the law provided that the preferences and not the assignment should be void. The fact that the penalty imposed by the legislature was a harsh one, and operated unjustly upon the right of others, seems to have been something of an obstacle in the way in determining Ott's intent.

The inquiry is: Do the facts and circumstances and the testimony show that Ott, by his various transactions and instruments, has made an assignment with preferences? If he has done so, then all he has done is void by the terms of the statute. If the testimony is sufficient to justify that conclusion, when the law makes the preferences void, the same result must follow, though the law makes the assignment void.

The legislature has fixed the penalty. It is for the court to say whether the law which prescribes it has been violated.

We respectfully submit that so much of the decree of the Circuit Court as has been appealed from, should be re-

versed, and that the complainant is entitled to a decree for the entire fund in the hands of the assignee, or so much thereof as may be necessary to pay its judgment with interest and costs.

F. J. SMITH, and
J. M. FLOWER,
Counsel for Appellant.

Note:

As to insufficiency of oral promise by Att to create lien on cars of glass, see:

Jones on Pledges, secs. 23, 28 and 29:
Kimball vs. Hildreth, 8 Allen, 168.
Nisbit vs. Bank, 12 Fed. Rep. 686 (1690.)
Casey vs. Cavaroc, 96 U.S. 467.
Bank vs. Dows, 68 Pa., 460.

As to impropriety of giving pledge Appr. 24, see:

Oil Co. vs. Bank, 126 Ills., 584.

Office Supreme Court U. S.
FILED,
NOV 12 1891
JAMES H. McKENNEY,
CLERK

Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1891.

No.

THE SOUTH BRANCH LUMBER COMPANY,
Appellant.

vs.

GEORGE OTT;
J. B. MEYER, Assignee of George Ott;
AUGUSTE MEYER, Executrix of Chas. F. Meyer, deceased;
CHARLES HILL;
ADDIE KLOPPENBURG, and
CHARLES BEIDERBECKE, Guardian of Addie Kloppenburg

Appeal from the Circuit Court of the United States for the Southern District of Iowa.

BRIEF FOR APPELLEES.

JOHN C. BILLS,
Solicitor for Appellees.

FRANK J. SMITH,
Solicitor for Appellant.

Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1891.

No.

THE SOUTH BRANCH LUMBER COMPANY,
Appellant.

vs.

GEORGE OTT;
J. B. MEYER, Assignee of George Ott;
AUGUSTE MEYER, Executrix of Chas. F. Meyer, deceased;
CHARLES HILL;
ADDIE KLOPPENBURG, and
CHARLES BEIDERBECKE, Guardian of Addie Kloppenburg

Appeal from the Circuit Court of the United States for the Southern District of Iowa.

BRIEF FOR APPELLEES.

JOHN C. BILLS.
Solicitor for Appellees.

FRANK J. SMITH.
Solicitor for Appellant.

STATEMENT OF THE CASE.

For about twenty-five years prior to April 27th, 1886, the defendant, George Ott, had been engaged in the business of merchandizing in sash, doors, blinds, etc., at Davenport, Iowa, and for six years prior to said time had also manufactured such goods.

On the 27th day of April, 1886, the said George Ott made a general assignment of all his property for the benefit of all his creditors, to Charles F. Meyer, under the provisions of Chapter 7, Title 14, of the Code of Iowa.

Immediately after the assignment was made it was recorded as provided in the statute, and on the same day the assignee took possession of all the property of said Ott, and on the 14th of May, 1886, filed his inventory, etc., in the District Court of Iowa for Scott County and duly qualified as such assignee.

On the 28th day of April, 1886, the complainant brought its action against said George Ott, in said District Court of Iowa in Scott County, caused a writ of attachment to issue, and served said writ by garnishing the assignee of said Ott, which action was by the plaintiff, a non-resident corporation, removed into the Circuit Court of the United States for the Southern District of Iowa.

On the 1st day of October, 1886, the bill in this suit was

filed in the Circuit Court of the United States for the Southern District of Iowa, seeking to have said deed of assignment decreed void; asking that a receiver be appointed to take possession of the fund in the hands of said assignee, and that said fund be applied to the payment of the claim of complainant as set up in its said action by attachment.

At the June Term, 1887, of said Circut Court this suit came up for final hearing, and a decree was entered establishing the validity of said assignment and giving to complainant the proceeds of the Charles Hill mortgage, being $3,225, from which decree complainant appealed.

The answer of defendants contains a plea to the jurisdiction of the said United States Circuit Court, which was argued in that court, and decided adversely to defendants. Because of some recent rulings of this court upon this point, we have concluded not to further urge the question of jurisdiction.

BRIEF OF POINTS AND AUTHORITIES.

FIRST.

The deed of assignment is not defective in form.

It provides that the property assigned is to be sold, and the proceeds distributed to the creditors, under the provisions of Chapter Seven (7) Title Fourteen (14) of the Code of Iowa. (Page 24, Record.)

SECOND.

In the transaction between Ott and the Chicago, Milwaukee & St. Paul Rail Road Company, the company acquired no rights which it did not have before. The paper given to the company by Ott, was simply evidence of a contract already existing. This contract was binding upon the assignee of Ott, and the company had actual possession of the property.

(Record pages 334, 324, 322, 323, 329, 63, 64, 332, 88, 286, 324.)

Hansell vs. *Harrison*, 105 U. S., 401.
Meyer vs. *Evans*, 66 Iowa, 179-183.

Statements of the assignor made *after* the assignment, are not competent evidence to impeach the validity of the assignment.

Culver vs. *McCortney*, 40 N. Y., 221.
Winchester & P. Mfg. Co. vs. *Creary*, 116 U. S., 161.

THIRD.

As to the alleged preferences, which are set up in plaintiffs bill, to invalidate the assignment, this court has uniformly held, that it will follow the decisions of the highest court of the State where the assignment is made.

Chicago Union Bank vs. *Kansas City Bank*, 136 U. S., 223, 235.

And cases there cited.

FOURTH.

The Supreme Court of Iowa holds that any disposition of his property by an insolvent debtor, which can be considered as within the prohibition of our statute regulating "general assignments," must in fact be *intended* by the debtor to be a general assignment, and must in fact *amount* to a general assignment of *substantially all the debtors property*, and must have the effect to prefer creditors.

That so long as the insolvent debtor retains dominion over his own property, he may by conveyances use it to pay or secure his debts, even if this has the effect to prefer creditors, and that only when he in fact makes a general assignment does the statute have effect.

The portion of our statute in question is section 2115 of the

Code of Iowa, and is found at the begining of the third part of our argument.

The following are all the Iowa cases decided, in which this statute has received construction.

Coles & Co. vs. *Ricketts*, 1 Iowa, 582.
Meeker vs. *Saunders*, 6 Iowa, 61.
Burrows vs. *Lehndorff*, 8 Iowa, 96.
Johnson vs. *McGrew*, 11 Iowa, 151.
Fromme vs. *Jones*, 13 Iowa, 474.
Cole vs. *Dealham*, 13 Iowa, 551.
Graves vs. *Alden*, 13 Iowa, 573.
Buell vs. *Buckingham & Co.*, 16 Iowa, 284.
Hutchinson & Co., vs. *Watkins*, 17 Iowa, 475.
Rable vs. *McDonald*, 18 Iowa, 493.
Lampson & Powers vs. *Arnold*, 19 Iowa, 479.
Lyon vs. *McUraine*, 24 Iowa, 9.
Davis & Co., vs. *Gibbon*, 24 Iowa, 257, 263.
Farwell & Co., vs. *Howard & Co.*, 26 Iowa, 381.
Van Patten & Marks, vs. *Burr*, 52 Iowa, 518.
Van Patten & Marks, vs. *Burr*, 55 Iowa, 224.
Kohn Bros. vs. *Clement, Morton & Co.*, 58 Iowa, 589.
Van Horn vs. *Smith*, 59 Iowa, 142.
Perry vs. *Vezina*, 63 Iowa, 25.
Jaffray & Co. vs. *Greenbaum*, 64 Iowa, 492.
Cadwell's Bank vs. *Crittenden*, 66 Iowa, 237.
Carson et al vs. *Byers et al*, 67 Iowa, 606.
Gage & Co., vs. *Perry*, 69 Iowa, 605.
Garrett vs. *The Burlington Plow Co.*, 70 Iowa 697.
Aulman vs. *Aulman*, 71 Iowa, 124.

Van Patten & Marks vs. *Thompson*, 73 Iowa, 103.
Bolles vs. *Creighton*, 73 Iowa, 199.
Loomis & Son vs. *Stewart*, 75 Iowa, 387.
King vs. *Gustafson*, 80 Iowa, 207.
Bradley vs. *Bischel*, 46 N. W. Reporter, 755.

FIFTH.

The chattel mortgage given by Ott to Charles Hill, to secure Hill as endorser of Ott's paper, was for a good consideration.

Duncan vs. *Miller*, 64 Iowa, 223-226.
Gibson vs. *Warden*, 14 Wall., 244.

As the assignee took the property subject to all equities against it in the hands of Ott, the mortgages were valid as between the assignee and the mortgagees, whether recorded or not.

Meyer vs. *Evans*, 66 Iowa, 179-183.
Hansell vs. *Harrison*, 105 U. S., 401.
The Davenport Plow Co. vs. *Lamp*, 80 Iowa, 722-725.
Nat. Bank vs. *Life Ins. Co.*, 104 U. S., 54.

SIXTH.

The chattel mortgage to Addie Kloppenburg, being to secure trust money held by Ott as Guardian of said Addie, was entitled to preference even after the property passed to the assignee. So the mortgage must be held valid.

National Bank vs. *Life Ins. Co.*, 104 U. S., 54.
The Davenport Plow Co. vs. *Laup*, 80 Iowa 722.
McLeod vs. *Evans*, 66 Wis., 401.
Pennell vs. *Deffell*, 4 D. E., G. M. & G., 372.
Knatchbull vs. *Heatlell*, The Law Reports, Ch. Div., 696-709.

SEVENTH.

The evidence that Ott used the words alleged, when he made the payment to McClelland, is not satisfactory; but admitting that he did, it only shows that he knew he was financially embarrassed, and might be compelled to suspend payment, and does not rebut his own uncontradicted evidence, that he did not contemplate an assignment until the next day.

EIGHTH.

If Ott did make false statements as to his financial condition, this would not effect the validity of the assignment.

Straus vs. *Rose*, 59 Md., 525-533.
Horwitz vs. *Ellinger*, 31 Md., 492.
Pike vs. *Bacon*, 21 Me., 280-285.
Corahooran vs. *Hart*, 21 Penn., 495-500.

ARGUMENT.

Complainant's bill seeks to have the deed of assignment of George Ott declared fraudulent and void as to it, a creditor of said Ott, so that Meyer, the assignee, may be charged as garnishee in the complainant's attachment action.

The result of this would be, that complainant would be paid in full, while the other creditors of Ott would get little or nothing.

Certainly there should be strong and compelling reasons presented to a court of equity to force it to commit such injustice.

What are these reasons? We will answer them in the order as stated in the bill:

I.

IS THE DEED OF ASSIGNMENT DEFECTIVE IN FORM?

It is alleged in the bill, that, "the said assignment does not purport upon its face to be for the benefit of all the creditors of the said George Ott in proportion to the amount of their respective claims." (Page 2, Record.)

If this were true the assignment would be void upon its face

in any court, and complainant's resort to a court of equity would be wholly unnecessary.

The assignment conveys *all* the property of Ott to Meyer, his assignee, and then continues as follows:

"In trust, however, and to and for the following uses, intents and purposes, that is to say, the said party of the second part is to receive said property herein assigned, and is to sell and convert the same into money and distribute the same among the creditors of said George Ott, under the provisions of Chapter seven (7), Title Fourteen (14), of the Code of Iowa." (Page 24, Record.)

The deed of assignment is upon the express condition that the property shall be distributed among the creditors of Ott, under the provisions of Chapter 7, Title 14, of the Code of Iowa.

As this chapter provides for a *pro rata* distribution among all the creditors, and allows no other distribution, we can not see wherein the assignment is defective in that respect.

II.

THE TRANSACTION BETWEEN OTT AND THE CHICAGO, MILWAUKEE & ST. PAUL RAILROAD COMPANY.

The *second* cause of complaint in the bill is the alleged

preference given by Ott to the above named railway company.

We wish to treat this transaction by itself, because it is the only one which occured on the same day with the assignment, or *after* Ott intended to make an assignment.

At the time of making the assignment, Ott made and sent to the agent of the said company, at his office in Davenport, the following writing:

"*Mr. White, Agent, &c:*

"I consent that you may hold the four car loads of glass now in possession of the C., M. & St. P. R. R. Co., to secure you for the freight I owe your said company until the same shall be paid.

"*April 27th, 1886.* "GEORGE OTT."

(Page 334, Record.)

The answer of defendants to this part of the bill is, in substance, that for many years before making of said assignment said railway company, which has a railroad and station at said city of Davenport, had been in the habit of bringing to said city to be delivered to said Ott large quantities of goods, wares and merchandise used and sold by him in his said business, and that said Ott paid to said company its charges for transportation of said property; that it was always one of the rules of said company that such freight and charges should be paid before the said property so transported should be delivered to the consignee; that said railroad company was and is a common carrier; that it was at times not convenient for said Ott to pay

the freight and charges on such property so transported and consigned to him at the time when it was so delivered to him: and it was the practice and custom for said Ott to leave large quantities of such property in the cars of said company for many days on the side-tracks of said company, and that long prior to said 27th day of April, 1886, said Ott and said railway company orally agreed between themselves that if said company should at any time allow said Ott to receive and remove any such property so transported without first paying the freight and charges on the same, then said company should have a lien on and at any time have the privilege of holding any property of said Ott in its cars, on its tracks or side-tracks as a pledge or security for all amounts at any time due from said Ott to said company for freight or charges, not only on said property so held, but also on any property which had been removed by said Ott without paying the freight and charges on the same: and that just before the said assignment was made the agent of said railway company at Davenport, with whom all of said business had been transacted, requested said Ott to give him some evidence in writing of his right to hold said property in pursuance of said oral contract, and in compliance therewith said Ott did, before said assignment was made or delivered, make and give to said agent the writing above set forth.

That on the morning of the 27th of April, 1886, when said Ott had fully determined to make said assignment, said company held the four carloads of glass, and had the right to hold the same as security for about $800 due from said Ott to it as freight and charges on said glass and also on other property which said Ott had removed under said oral agreement: that after he had determined to make said assignment it would have been committing a fraud on said company, and would have been

obtaining the possession of said property from said company under false pretenses, if said Ott had demanded, received or removed the same knowing that he could not and would not be able to pay the amount so due said company.

That defendant, Meyer, as such assignee, soon after said assignment, paid the amount due said company from the funds in his hands as such assignee, and released said property from said lien, and now has the proceeds of the same. (Page 14, Record.)

The foregoing allegations are fully sustained by the evidence:

Mr. White, the agent of the company, testifies that it was a rule of the company not to deliver freight unless the freight bills are paid. (Page 324, Record.)

That the company allowed Ott to receive his goods under an agreement that there should always be a sufficient amount of freight on the track to secure what he owed it. (Page 322, Record.)

That about two weeks before the assignment he was urging Ott to pay what he owed the company, and Ott told him he would secure him with the glass on the track for what he owed the company for freight; and that the amount of said indebtedness at that time was about $800. (Pages 322, 323, Record.)

That these carloads of glass had been on the side-track about

thirty days prior to the assignment. (Pages 329, 63, 64, Record.)

And were in charge of a watchman at night. (Page 332, Record.)

Mr. Heesch, the bookkeeper for Ott, testifies that McRath, the local agent for the railway company, about two or three months before the assignment, called at Ott's office to collect the freight due, and Mr. Ott agreed to pay him all he could before the next report day, and told him he need not be afraid for the balance, because there were sufficient goods on the track to more than pay for what was due them. (Page 88, Record.)

Mr. Ott testifies that he gave Mr. White the paper because a long time before he had agreed to keep plenty of freight on the track to at all times make him secure for the charges he owed the company. (Page 286, Record.)

The evidence shows that Meyer, the assignee, paid the charges to the railway company and received the glass as a part of the property conveyed by the assignment. (Page 324, Record.)

The foregoing evidence is absolutely uncontradicted, and proves the transaction to be as alleged in the answer:

There was no *preference* given whatever, either by way of payment or security.

The railway company had never parted with the posession of the property, and, as between it and Ott, had a perfectly valid lien accompanied with actual posession, by virtue of the oral agreement between them: and the assignee, *without* any written evidence of such agreement, would have taken no better right than Ott had.

Ott simply gave the company written evidence of what it already had—a perfectly valid contract to hold the possession of the property in its cars and on its tracks untill the charges due it were paid.

The giving of the writing was an act of good faith on the part of Ott that the agent of the company might have something to show to the assignee for his claim to hold the property.

If Ott had by any act, knowing, as he did, that he was about to make an assignment, procurred the possession of that glass without paying the amount due the company he would have been guilty of obtaining property under false pretenses.

The arrangement between the company and Ott was made in perfect good faith long before the assignment, with no intent to defraud any one, and so long as the company held possession of the property it was not possible that its lien should be defeated.

It is not claimed that the original transaction or agreement amounted to a preference, but that the giving of the writing of April 27th did.

This court has held that a supplemental agreement or contract, made with knowledge of insolvency and in contemplation of bankruptcy, if made in good faith, for the purpose of securing to a party the benefits of a prior uncompleted contract, is not a fraudulent preference, and is valid as against the general creditors in bankruptcy.

Hausell vs. *Harrison*, 105 U. S., 401.

The syllabus is as follows:

"*First.* An agreement between A and B that, in consideration that A should furnish money to B to buy skins, B would tan them and return them to A for sale on commission, and that such skins, in the process of tanning, should be securities for the money advanced, creates a charge upon the property in favor of A, in the nature of a mortgage, which is good between the parties, and as to B's assignee in bankruptcy, without a change of possession, and is capable of enforcement."

"*Second.* A subsequent agreement between the parties, on B's becoming unable, from sickness, to fulfill such contract, that A should take possession of the tannery, finish the skins and sell them, and pass the net proceeds to the credit of B, after deducting advances and expenses made shortly before B's petition to be adjudicated a bankrupt, though made with knowledge of B's insolvency and in contemplation of his bankruptcy, if made in good faith for the purpose of securing to A the benefits of the former contract, is legitimate and does not

constitute an unlawful preference in fraud of the bankrupt law."

Hauselt advanced money to Bayer to be used in buying skins and tanning them. Hauselt was to have seven per cent interest per annum on his money, and the tanned skins were to be sent to Hauselt to be sold by him on commission; and the skins were all the time to be "considered as security for the refunding, with interest, of all the moneys advanced" by Hauselt.

The court held that this constituted, as between the parties, a mortgage; and that the assignee took the property subject to the equities between the parties, and could assert in behalf of the general creditors no claims to the proceeds of the property which the bankrupt himself could not have asserted; and that as the subsequent agreement was only intended to give Hauselt the benefit of the original contract, it did not constitute an unlawful preference and was valid.

In Iowa the assignee takes the property subject to all existing liens and equities.

Meyer vs. *Evans*, 66 Iowa, 179-183.

Mr. Beidler testified that Mr. Ott told him *after the assignment*, in substance, that Mr. White came to him on the morning of the assignment and induced him, as a personal matter, to give him the paper above set out. (Pages 138, 139, Record.)

This is denied by Mr. Ott (page 318, Record), and also by Mr. White (page 327, Record).

Besides, statements of the assignor, made *after* the assignment, are not competent evidence to impeach the validity of the assignment.

Culver vs. *McCorkacy*, 40 N. Y., 221;
Winchester & Partridge Mfg. Co. vs. *Creary*, 116 U. S., 161.

III.

THE ALLEGED PREFERENCES.

The third and final attack in the bill of complainant against the validity of said assignment is because of two certain chattel mortgages made by Ott on the 20th of February, 1886, and some small payments to creditors for a few days preceding the assignment. One of said mortgages was made to Charles Hill to secure him as endorser for Ott at bank for $3,000, and the other to Addie Kloppenburg, a minor, for whom Ott was guardian. Ott had used $3,500 of his ward's money in his business. The Probate Court made an order that he should give security for this money, and he made a mortgage on certain personal property to her for that amount.

These mortgages were recorded on the 26th of April, 1886.

when Ott thought he might be compelled to suspend payment, but before he had determined to make an assignment.

Before we take up these separate transactions, for the purpose of showing what they amount to, it will be well to place before the court just what the law of Iowa is as to such alleged preferences rendering invalid a general assignment for the benefit of creditors.

Section 2115 of the Code of Iowa is as follows:

"No general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors shall be valid unless it be made for the benefit of all his creditors in proportion to the amount of their respective claims."

This statute has been in force at least since 1851, and is found in the Code of 1851 as Section 977, and in the Revision of 1860 as Section 1826.

It is averred in plaintiff's bill that these mortgages and payments were made *after* Ott had finally determined to make a general assignment, and that they in fact constitute a part of said assignment, and having the effect of prefering creditors render the assignment void.

This court has uniformly held that "the question of the construction and effect of a statute of a state regulating assignments for the benefit of creditors is a question upon which the

decisions of the highest court of the state, establishing a rule of property, are of controlling authority in the courts of the United States."

Chicago Union Bank vs. *Kansas City Bank*, 136 U. S., 223,235.

And cases there cited.

It is therefore of the first importance to learn what construction has been placed upon this statute by the Supreme Court of Iowa, as is stated in the opinion of his Honor, Judge Love, who decided this case in the Circuit Court. (Page 341, Record.)

To save this court all labor possible in making this examination, we have concluded to print a statement of all the Iowa cases in which this matter is considered and decided, in their order as made, beginning in 1855. They are as follows:

Coles & Co. vs. *Ricketts*, 1 Iowa, 582.

Russell sold and delivered, March 26th, 1855, his entire stock of goods in his store to plaintiffs in satisfaction of what he owed them. Russell at the time was insolvent, and his insolvency was known to plaintiffs.

It was claimed that this sale was an assignment of all the debtor's property and void because not made for the benefit of all his creditors. The court says (page 584):

"On the part of the defendant it is insisted that the word assignment in this statute includes *sale;* that the intent of the legislature was that insolvent debtors should distribute their effects with an even hand, and that if the statute is not so construed the end of its enactment will be defeated, by insolvents always selling and never assigning. While it might be very desirable that the effects of an insolvent debtor should be divided among his creditors *pro rata*, without permitting any preference or advantage to any one above another, yet has the legislature attempted, by this statute to provide a means of enforcing this ideal equity to the extent claimed? We are clearly of the opinion that it has not.

"In giving construction to the word assignment, as used in the statute, we must be governed by the ordinary rules of construction. The word assignment is one which has acquired a peculiar and appropriate meaning at law; it is a technical word, and must be construed according to that peculiar and appropriate meaning. * * * * *

"The language, no general assignment of property of an insolvent or in contemplation of insolvency *for the benefit of creditors*, to our minds, clearly implies a trust and contemplates the intervention of a trustee, which is incompatable with the idea of a sale absolute."

Meeker vs. *Saunders*, 6 Iowa, 61.

A debtor conveyed to a trustee his "entire stock of goods, now in store at my storehouse, etc., and gave the assignee the use of the storehouse for the purpose of executing his trust. It was claimed by attaching creditors that the assignment was

void, for the reason, among others, that it did not purport to convey all the property of the assignor.

The court held otherwise, and say (page 69):

"If the deed does not convey all of his property it is good for what it does convey. That it does not include all is no sufficient reason for adjudging it bad for what it does include. It can hardly be fairly argued that it is a general assignment because it conveys all his property, and yet that it is void, because, being a general assignment, it does not convey all his property. A general assignment must make provision for the payment of all claims, *pro rata*; yet, if it does not purport to convey all the grantor's property for the payment of his debts, it is not a general assignment."

Burrows vs. *Lehndorff*, 8 Iowa, 96.

This case was determined upon the correctness of instructions given to the jury in the trial court. The case involved the validity of five chattel mortgages, each covering the same property, and a deed of trust covering not only the same personal property as the chattel mortgages, but also some real estate, to secure certain creditors of defendant, the grantor.

These conveyances were all dated January 16th and 17th, 1857.

The second mortgage was made subject to the first, the third to the second and first, and so on to the last.

They were all filed for record January 17th, 1857, with a space of five minutes between them, in the order of the priority of the lien of each.

The trial court submitted to the jury certain questions tending to show the nature of these transactions, and upon this point the Supreme Court says (page 101):

"It seems to us that the questions of fact, upon which the character of the transaction was to be determined, were properly and fairly submitted to the jury for their determination, and that the conclusions of law, based upon a supposed state of facts, were correctly stated. Was the defendant insolvent? Did he make the instruments upon his own motion and without consulting his creditors? Were they made at the same time, constituting one transaction? Was one creditor preferred over another? Did he convey all his property?

"These questions being answered in the affirmative, then they were to disregard the mortgage, and properly so, for the transaction would then amount, in legal effect, to a general assignment, and would be void as against plaintiffs. The jury, by their verdict, have responded to these enquiries in the affirmative, and with their finding we have no disposition to interfere."

And on page 103 the court, in considering the question of its being *one transaction*, says:

"There were six instruments, covering some fifteen to twenty

pages of paper, all acknowledged before the same officer, each one referring to those preceding, and all of them filed for record on the same day, within the same hour, and almost, indeed, at the same minute, and presented for record, too, as we hold the jury might well conclude by the defendant. How could the jury doubt, under such circumstances, as to defendant's intention? To make it one transaction it was not necessary that all of the creditors should have been provided for in the same instrument, for the intention of the defendant to make a general assignment and at the same time prefer his creditors, contrary to the express prohibition of the statute, could as well be accomplished by executing separate instruments as by executing one."

In deciding this case the Supreme Court takes the findings of the jury, as determining the facts. Among other things the jury found that these conveyances were all *made at the same time*, and *constituted but one transaction*, and covered *all the property of the grantor*. So it was, in fact, a *general assignment* in all but the name given it, and it *preferred* creditors.

Johnson vs. *McGrew*, 11 Iowa, 151.

A debtor conveyed all his non-exempt property to one of his creditors for $1,000, as follows: To pay him a debt of $300, $250 in cash, and the remainder of the $1,000 to be paid by the grantee on certain debts of grantor.

It was held this did not constitute a general assignment, but was a sale absolute.

Fromme vs. *Jones*, 13 Iowa, 474.

Action in trespass for taking certain personal property.

The defendant caused writs of attachment to be levied upon certain personal property as the property of Altheimer & Co.

The plaintiff claimed the same property by virtue of a chattel mortgage from said Altheimer & Co.

The defendant asked the court to instruct the jury "that if the property conveyed (by the mortgage) was all the property of said firm, and that they were insolvent at the time, and owed other parties for which no provision was made, that such transfer was an assignment, and under the statute void." This was refused, and the Supreme Court held it was not error.

The court *did* instruct "that if they found that Altheimer & Co. were indebted to plaintiff in the sum specified in the mortgage, and that the object of the mortgage was in good faith to secure and provide for the payment of said debt, then said mortgage was not fraudulent, even though it preferred the debt of Fromme to that of other creditors, and even though Altheimer & Co. were insolvent at the time."

In reference to the case of *Burrows* vs. *Lehndorff*, the court says (page 481):

"The instrument in the case of *Burrows* vs. *Lehndorff*, 8 Iowa, 101, construed by this court as an assignment, was made under different circumstances than the one in this case. There

the debtor attempted to execute bills of sale or mortgages to various creditors, making one subject to another, recording one a few minutes after the other, and without any knowledge or consent thereto by the creditors.

Cole vs. *Deatham*, 13 Iowa, 551.

In this case the validity of a general assignment is assailed, on the ground that it preferred creditors.

The court says (page 552):

"The assignor made two mortgages, filed them for record without the knowledge of the mortgagees, and within five minutes thereafter filed the deed of general assignment, bearing the same date as that on which the mortgages were acknowledged."

The mortgages were executed and acknowledged October 15th, the same day with the assignment. (Page 553, 554.)

It was held that the two mortgages and the general assignment constituted one transaction, preferring creditors, and were void.

Graves vs. *Alden*, 13 Iowa, 573.

The defendant sold his entire stock of goods to one of his

creditors to pay his debt, and received the balance of the inventory, $377.98, in cash.

It was held that it did not constitute a general assignment.

"That to render a transfer of property void on the ground that it is a general assignment in which creditors are preferred it must appear that the transfer was made with an intent to give a preference to creditors and in view of insolvency."

Buell vs. *Buckingham & Co.*, 16 Iowa, 284.

A corporation sold its property to its President to pay a debt due him. Other creditors levied on it, and this was a suit in equity by the President to enjoin the sale under the execution of the attaching creditor.

Judge Cole says (page 289):

"There is no evidence in the case that the corporation was insolvent, or that the sale to Elijah Buell embraced all its property, but if such facts were shown, since the transaction was an absolute sale in good faith for a valuable consideration and not a mortgage, or pledge, or assignment, with any contingent interest remaining in the grantor, it cannot, under the former decisions of this court, be held to be a general assignment and therefore void.

Code of 1851, Section 977:

Cowles vs. *Ricketts*, 1 Iowa, 582;
Fromme vs. *Jones*, 13 Iowa, 474.

Judge Dillon says (page 296):

"Nor do I accede to the correctness of another of the defendant's propositions. They contend that, as the sale to Buell embraced the whole property of the company, or at least the bulk of the property, it amounted to an assignment for the benefit of creditors; and, also, that such a sale is contrary to and would defeat the objects of the association, and, therefore, it is not in the power of the directors to make it. Now this corporation possessed all the powers of a private person in regard to the disposition of its property. A private person could make a transfer of all his property in payment of one creditor if it was done *bona fide*.

Cowles vs. *Ricketts*, 1 Iowa, 582.

"That this corporation could do likewise, through the agency of its directors; that such a disposition by them would be binding, and would not have the effect to end or dissolve the corporation, is clear upon the authorities."

Hutchinson & Co. vs. *Watkins*, 17 Iowa, 475.

"A sale *bona fide* made by a debtor to one creditor of his entire property in payment of his debt is not fraudulent as to other creditors."

Roble vs. *McDonald*, 18 Iowa, 493.

A debtor made a general assignment. Some creditors attached the assigned property, and the assignee sued at law the sheriff and attaching creditors to recover the value of the property attached. The defendants set up that the assignment was made to defraud the creditors of assignor. The case simply decides that there was no error in the instructions given the jury—verdict for *defendants*.

Lampson & Powers vs. *Arnold*, 19 Iowa, 479.

On the 5th day of January, 1862, one of the firm of Lee & Kinnard, who were bankers, went to Mr. Noble, as their attorney, and informed him that they were unable to continue business much longer unless something very favorable should occur within a very few days, and desired his advice as to the best course to pursue. Mr. Noble expressed his preference for a general assignment, but before he could determine definitely he must know more of their condition, which he had not time then, nor for two or three days, by reason of his necessary absence, to examine. In the meantime he requested that the firm should pay, in money or property, the amounts they owed Pearsall, Benton and the State Bank, they being severally clients of his, and in relation to which peculiar circumstances existed.

On the 6th and 7th days of January the firm of Lee & Kinnard, in the absence of Mr. Noble, consulted his partner, Mr. Beckwith, who during those days made out scedules of the property preparatory to the making of an assignment. He also prepared a deed for certain real property to be executed

by Lee & Kinnard to Pearsall. On the evening of the 7th, Mr. Noble having returned, and the deed being signed, was delivered to him, as agent or attorney for Pearsall, and the money due Benton was paid him. The Cashier of the State Bank was called in and a settlement was had, showing a balance due the State Bank of about $8,000, some $7,000 of which had been borrowed that morning for the day. This balance was paid by Lee & Kinnard to the State Bank at that time, in money and negotiable paper. All this occured between 7 and 12 o'clock on Tuesday night, the 7th of January.

Between 12 and 2 o'clock on the morning of the 8th of January, all the necessary schedules having been theretofore prepared, the assignment was drawn, the assignee was sent for to ascertain if he would accept the trust, and it was executed, delivered and accepted. * * * *

The court says (page 483):

"There is some positive or express testimony that there was no final determination to make an assignment until after the payment of the claims mentioned above; but the circumstances tend to show that the intention and purpose of Lee & Kinnard, from the first, was to make an assignment."

The court then goes on to show, aside from any statute, it is a well established and long settled rule in English and American law that a debtor in failing circumstances may dispose of his property in trust for the benefit of his creditors, and may, by such conveyance or otherwise, give preference in payment to one creditor before another, and then says (page 485):

"It is very clear, from the foregoing principles, sustained and exemplified as they are by the authorities cited and numerous others, that unless the right of the debtor to dispose of his property absolutely, or by assignment with preferences, has been limited or restrained by our statute, the theory of the instructions given is wholly without any legal basis.

We proceed, then, to examine the extent of the limitation upon the debtor's rights imposed by our statute. It is provided by the Revision, Section 1826 (and was by the Code of 1851 Section 977): "No general assignment of property by an insolvent or in contemplation of insolvency for the benefit of creditors of the assignors shall be valid unless it be made for the benefit of all his creditors in proportion to the amount of their respective claims."

This statute, it will be observed, does not limit or affect the right of an insolvent debtor or one contemplating insolvency, or, indeed, any other, to sell or mortgage a part or all of his property to one or more of his many creditors, in payment or security of a particular debt or debts. And this is true, although such sale or mortgage may practically defeat all other creditors than the grantee from collecting their demands. Nor does the statute prohibit or interfere with the right of any debtor, as it existed prior to the statute, to make a *partial* assignment. In other words, the statute does not expressly, or by implication, extend any further or apply to any instrument or conveyance other than a *general assignment*. And, therefore, it is still competent for any debtor to pay a part of his creditors in full, to secure another part by mortgage or deed of trust upon a part of his property, to make a partial assign-

ment of still other property for the benefit of certain other creditors, with or without preference, and afterwards to make a general assignment. The statute simply provides that such general assignment shall not be valid unless it is made for the benefit of all the creditors *pro rata*.

Accordingly it was held by this court, in *Cowles & Co.* vs. *Rickells*, 1 Iowa, 582, that an absolute sale by a debtor of substantially all his property in payment of a single debt, he having other creditors, and they being known to the transferee, was not within the statute, and that the word "assignment" had a peculiar and appropriate or technical meaning in law, and was used in that meaning in the statute. And in *Fromme* vs. *Jones*, 13 Iowa, 474, it was held that a mortgage by an insolvent debtor of substantially all his property to secure one of many creditors was not within the statute, nor could it be brought within it by any proof *aliunde*. And in *Buell* vs. *Buckingham & Co.*, 16 Iowa, 284, it was held that an absolute conveyance by an insolvent corporation of all its property in payment of a single debt, leaving others unpaid, was not within the statute, and would not be held a general assignment even in equity. The case of *Burrows et al* vs. *Lehndorff*, 8 Iowa, 96, is, perhaps, not in essential conflict with these cases to which it must be held as subordinate.

Applying these principles and adjudications to this case, it becomes very evident that Lee & Kinnard had the right to pay their debt to Mr. Pearsall in property, to Mr. Benton in money, and to the State Bank in negotiable paper, and to make a general assignment of what was left for the benefit of their creditors *pro rata*. The only legitimate inquiry (aside from

the question of actual fraud, which is not alleged in this case) is whether these debts were paid *before* the assignment was made, or, to use the language of the books, before they "had lost dominion over the property." It can not affect the legality of these payments that Lee & Kinnard were insolvent or contemplating insolvency, or were *about* to make a general assignment, if, in fact, they did not make it till *after* the payments were made. Such distinct or special transfers have often been held not to be within the statute.

Meredith Mfg. Co. vs. *Smith*, 8 N. H., 348;
Law vs. *Wyman*, Id., 536;
Baker vs. *Hall*, 13 Id., 298;
Brown vs. *Foster*, 2 Mete., 152;
Henshaw vs. *Sumner*, 23 Pick. 446;
Fairbanks vs. *Hagues*, 23 Id., 323;
Bates vs. *Coe*, 10 Conn., 280;
Wonman vs. *Wolfersberger's Executors*, 19 Penn., 59.

Nor can the payments made, as shown by the evidence in this case, in any legal or just sense, be called a part of the same transaction or conveyances as the general assignment. The conveyance of the particular real estate to Mr. Pearsall was, and of legal necessity must be, a different transaction or conveyance from the general assignment. It was between different parties, having no special relation to each other, upon a different consideration, concerned different property, held by a different title, and related to the payment of a different and distinct debt. The fact that the two or more conveyances were made at nearly the same time has no necessary influence upon determining their identity of transaction.

* * * * * * *

"And in *Bates* vs. *Coe*, 10 Conn., 280, *supra*, where a debtor in failing circumstances and with a view to his insolvency, executed a mortgage of his estate to certain of his creditors, and afterward, *on the same day*, made a general assignment of his property, *including the mortgaged premises*, in trust for all the creditors, under a statute very like ours, it was held that the mortgage and assignment were not to be decreed a part of the same transaction, and that the preference given by the former was not within the prohibition of the statute. In the case of *Burrows et al* vs. *Lehndorff*, *supra*, there were several mortgages executed by the same parties, upon the same property, at the same time, and *without any knowledge on the part of the creditors*; these were filed by the grantors for record, within five minutes of each other successively, whereby priority or preference was sought to be given. The case is exceptional rather than at variance with the rule as stated or the cases cited." * * * * *

"This construction of our statute is in accordance with principle, and is sustained by abundant authority, and seems necessary to effectuate its purpose and guard against injustice. Our statute is grounded upon an entirely different base from the English and our national bankrupt laws. They are upon the theory of the right of creditors to force their debtors into an assignment in bankruptcy, and hence a long list of acts of bankruptcy are prescribed, upon the doing of any one of which, by the debtors, the creditors have the right to compel an assignment, or require him to "go into bankruptcy," while our statue is upon the theory that the debtor himself may choose as to general assignment or other method of distributing his effects, and only limits him when he chooses a general assignment."

Lyon vs. *McIlvaine*, 24 Iowa. 9.

In this case it is held:

That the mortgage of property situated in the State of Iowa by a debtor in contemplation of insolvency is not rendered invalid by the execution on the same day in another state of a general assignment with preferences of property in such other state.

Davis & Co. vs. *Gibbon*, 24 Iowa. 257, 263.

In this case the debtor made at the same time conveyances of property to several different creditors to secure debts due them respectively. The plaintiffs, also creditors of defendant, sought to set aside these conveyances, for the reason, among others, that they amounted to a general assignment preferring creditors. The court says (page 263):

"Neither can these transactions be considered in the nature of a general assignment and void because certain creditors are thereby preferred. A debtor in insolvent circumstances doubtless has the right to make payment of the claims of part of his creditors to the exclusion of others, or to secure the claims of part without providing that other creditors shall participate in the benefits of the security. All his property may be given in payment or security to one of his creditors, and the transaction will not be considered fraudulent or void because in consequence of the provision of Chapter 77 of the Revision, which requires all general assignments made in contemplation of

insolvency to be for the benefit of all the creditors of the insolvent.

"*Fromme* vs. *Jones*, 13 Iowa, 474;
"*Lampson & Powers* vs. *Arnold*, 19 Iowa, 481."

Farwell & Co. vs. *Howard & Co.*, 26 Iowa, 381.

Brigham Read, being insolvent, made a chattel mortgage covering all his property to defendants to secure a debt to them. Plaintiffs, also creditors of said Read, brought their action by attachment and garnished defendants. Defendants immediately after the making of the mortgage took possession of the goods mortgaged, and sold them, and applied the proceeds on their debt. Plaintiffs claimed that the transaction amounted to a general assignment preferring creditors. The court held it did not.

Van Patten & Marks vs. *Burr et al*, 52 Iowa, 518.

Action in chancery by an attaching creditor to set aside a general assignment for benefit of creditors and two chattel mortgages made at the same time.

A demurrer to plaintiffs' petition was sustained and plaintiffs appealed.

The petition of plaintiffs stated that the defendant, Burr,

"in contemplation of insolvency, and being then insolvent, made, executed and delivered in writing a general assignment of his property for the benefit of his creditors, contained *in three instruments* executed by him," etc.

The defendant was a grocer, and his property consisted in his stock of goods. He made the two mortgages and the deed of assignment at the same time, and they were all recorded on the same afternoon.

The petition further states: "That said instruments were intended and do constitute as a whole a general assignment of his property for the benefit of creditors," and that the mortgagees named in the two mortgages at once took possession of the mortgaged and assigned property. The court held, upon demurrer to the petition, that it stated a good cause of action, and says (page 522):

"It will be observed the petition alleges that the several instruments were intended to constitute a general assignment for the benefit of creditors; the facts averred clearly show that the execution of the three instruments was a contrivance to enable the insolvent to prefer certain creditors, without making payment to them, in the assignment of all his property."

In this opinion the case of *Cowles* vs. *Ricketts*, 1 Iowa, 582, and *Lampson & Powers* vs. *Arnold*, 19 Iowa, 479, are cited and approved.

In this case the court simply holds that what is *intended* to

be, and in substance is, a general assignment preferring creditors, can not be made legal by putting it into more than one instrument.

The order of the court below sustaining the demurrer to the petition was reversed and the case remanded for further proceedings. Defendants answered, and on final hearing it was shown that in fact one of these mortgages was made and delivered the day before it bore date, and the day before the assignment, and this mortgage was held to be valid and not a part of the general assignment. See

Van Patten & Marks vs. *Burr*, 55 Iowa, 224.

Kohn Bros. vs. *Clement, Morton & Co.*, 58 Iowa, 589.

One of the questions in this case was whether a chattel mortgage given to secure a part of the debtor's creditors constituted a general assignment. The court says (page 593):

"The question presented is as to whether the mortgage in question can be held to have been intended as a general assignment. In our opinion it can not. The word 'assignment,' as used in the statute, has a techninal meaning, and must be so construed. For an exposition of its meaning see the learned opinion of Mr. Justice Cole in *Lampson & Powers* vs. *Arnold*, 19 Iowa, 479. It is not necessary it is true that an instrument be denominated an assignment to justify a court in holding that it was intended as an assignment. It may be held to be such where it is denominated a mortgage. Several mortgages taken together may be held to constitute an assignment.

"*Burrows* vs. *Lehndorff*, 8 Iowa, 96.

"Two or more mortgages and another instrument executed formally for an assignment may be taken together as constituting an assignment.

"*Van Patten & Marks* vs. *Burr*, 55 Iowa, 224.

"But a mortgage, though executed by an insolvent person and covering all his property, is not necessarily an assignment.

"*Fromme* vs. *Jones*, 13 Iowa, 480;
"*Farwell & Co.* vs. *Howard & Co.*, 26 Iowa, 384.

"It depends upon the intent. An assignor intends to divest himself not only of the title to his property, but the control. An assignment is made in view of insolvency. It is the initiation of proceedings for the absolute disposition of the property and distribution of the proceeds. The purpose of a mortgage, if it is what it purports to be, is something quite different. We see nothing in the case at bar to indicate that the mortgagors intended anything but the giving of security."

Van Horn vs. *Smith*, 59 Iowa, 142.

In this case Van Horn, the debtor, made to his wife, the plaintiff, a conveyance of all his property, and his wife made, on the day following, a chattel mortgage covering the same property, in which she agreed to pay the debts of her husband, *preferring* certain of his creditors. There was no consideration for the conveyance to the wife except her agreement to pay her husband's debts as stated in the mortgage.

The court held that the conveyance to the wife and her mortgage to the creditors constituted one transaction, and was void as an assignment preferring creditors.

Perry vs. *Vezina*, 63 Iowa, 25.

In this case the defendant made a general assignment for the benefit of his creditors. The plaintiff, creditor of defendant, garnished the assignee, and claimed the assignment was void because it preferred creditors by a mortgage executed to secure certain creditors of defendant at about the same time of the making of the assignment.

The court held the assignment valid, and says (page 26):

"But, to justify a court in finding that a mortgage may be taken in connection with some other instrument as constituting an assignment, it should appear that the mortgagor, at the time he made the mortgage, had the intention to make an assignment. In the case at bar the mortgage appears to have been without such intention, and as a distinct and independent transaction. It is true the instrument designed as an assignment was made on the same day, and only three hours later. Our attention is called by plaintiffs to this fact. Under some circumstances such fact might, perhaps, have some importance. But the question of intention in this case appears to be controlled and absolutely disposed of by the stipulation of the parties. The stipulation is in these words: 'That when the said Vezina made the said mortgage to said Irwin said Vezina did not contemplate making the assignment which he did afterward make

on the same day.' It seems to us that this stipulation leaves nothing to be said upon this point."

Jaffray & Co. vs. Greenbaum et al. 64 Iowa, 492.

The defendants, Greenbaum, Schroder & Co., were merchants, doing business at Burlington, Iowa. On the 14th of May, 1879, they executed a mortgage to three persons as trustees upon their stock of goods at Burlington, also a similar mortgage to the same parties upon certain real estate in Burlington, and also a similar mortgage to the same trustees upon a stock of goods in Lincoln, Neb.

These mortgages were made to secure $39,167.74 due to fourteen different creditors named in the mortgages.

The plaintiffs, being among the unsecured creditors of defendants, attached the property, and claimed, among other things, that these trust mortgages were made in contemplation of insolvency, and constituted a general assignment preferring creditors.

The court held that these trust mortgages were valid, and say (page 495):

"But there was evidence tending to show that the mortgages did not cover substantially all the mortgagor's property, and were not designed to, and we think the evidence is such as to justify us in concluding that such was the fact. But whether

we are correct in this or not it seems clear to us that the mortgages can not be regarded as an assignment. We are well satisfied that the mortgagors did not execute them without hope of redemption, and did not regard them as a mode of making a final disposition of the property under an appearance of giving security. It may be that they were badly insolvent, and that the property mortgaged was insufficient to pay the mortgage debts, yet we think the mortgagors did not so regard it at the time. The mortgage debts were less than $40,000, and the mortgagors had a short time before estimated their assets at $73,000, and even after the execution of the mortgages they estimated their assets, mostly covered by mortgages, at $48,000. We can not think that they were intended as an assignment."

It was also claimed that these mortgages were fraudulent as intended to delay and defraud creditors, and in discussing this question the court says (page 497):

"When a debtor gives a preference he doubtless after, and perhaps usually, selects from his creditors his most intimate friends and others from whom he thinks that he can get the best terms. Such, we judge, was the basis of the preference given in this case."

And the court held that the mortgages were not void on that or any other ground.

Cadwell's Bank vs. *Crittenden*, Garnishee, 66 Iowa, 237.

For some time prior to August 7th, 1884, one Creager had been engaged in the business of a general merchant at Logan, Iowa, and was indebted to several parties, including plaintiff.

On the night of that day his store, building and stock of goods were destroyed by fire.

Among his creditors was the firm of Smith & Crittenden, of Council Bluffs. On the day after the fire Crittenden took a statement of the account of his own firm, and procured the accounts of all the other Council Bluffs creditors, to be assigned to him, and went to Logan to collect from Creager. He demanded security from Creager, and Creager executed a bill of sale by which he transferred to Crittenden all books of accounts pertaining to his business at Logan and the policies of insurance, which covered the stock of goods destroyed by the fire. This was all the property subject to execution which Creager owned.

The conveyance was made to secure not only the debt to Smith & Crittenden, but all the other debts of the Council Bluffs creditors assigned to Crittenden. Crittenden paid nothing to the other creditors for the assignment of their claims against Creager, and by his agreement with them he was bound to pay them only in case he succeeded in collecting the amounts.

Creager was indebted to James Yates, a salesman in his employ, to the amount of $278.31, which Crittenden agreed to pay in full from the property so assigned to him, but this part of their contract was not expressed in the written assignment,

The indebtedness to Smith & Crittenden was much greater than to any of the other wholesale houses, and Creager had previously agreed that he would secure his indebtedness to them at any time when they might deem themselves insecure.

Plaintiffs, unsecured creditors of said Creager, obtained judgment against him and garnished said Crittenden, and claimed on the trial that the transaction between Creager and Crittenden amounted to a general assignment preferring creditors.

The court held the assignment valid, and says (page 240):

"This court has frequently heretofore had occasion to determine the legal effect of transactions in which insolvent debtors have made conveyances of all their property for the benefit of a portion of their creditors, and it is settled by the cases that the question whether such conveyances should be regarded as an assignment for the benefit of creditors or a mortgage for the security of particular debts, is to be determined by the intention of the parties, as it may be ascertained from the circumstances of the transaction. If the conveyance is to a trustee, and the debtor intends to divest himself, not only of the title to the property but of all control over it; if it is intended as an absolute conveyance of all his property, and is made for the purpose of securing a distribution of its proceeds among his creditors or a portion of them, in legal effect it is an assignment for the benefit of creditors, no matter what name or designation the parties may have given it. On the other hand, if the intention of the debtor is merely to secure his debt to

one or more of his creditors, and the conveyance is not intended as an absolute disposition of his property, but he reserves to himself a right therein, the conveyance will be treated as a mortgage, even though the debtor is insolvent at the time, and it covers all his property, and but a portion of his debts are secured by it.

"*Fromme* vs. *Jones*, 13 Iowa, 480;
"*Lampson & Powers* vs. *Arnold*, 19 Iowa, 479;
"*Farwell* vs. *Howard*, 26 Id., 381;
"*Kohn* vs. *Clement*, 58 Id. 589.

* * * * * * *

"The demand made by the garnishee was for security for the debts. This demand was made in pursuance of the previous agreement of Creager that he would secure the debt to Smith & Crittenden whenever they should conclude that security was essential to their protection. Creager recognized and admitted the justice of the demand, and he executed the instrument in obedience to it. He had no other property except the policies and accounts which he could pledge as security for the debt, and by the instrument in question he assigned them; and this was done in execution of his agreement to secure the debt. The instrument, although an absolute assignment in form, was not intended as an absolute transfer of the property, but he reserved to himself an interest in it. It was agreed that the balance of the proceeds, after the costs of collection were paid and the debts were satisfied, should be paid over to him; and he had the undoubted right at any time, upon the payment of the secured debts, to repossess himself of the property. Much stress is placed by counsel for appellant on the fact that the

garnishee had no real interest in any of the debts except that due to Smith & Crittenden. It is claimed that he was a mere trustee, and that the conveyance of the property to a trustee with intent that he should apply the proceeds in satisfaction of the debts gives to the instrument the character of an assignment for the benefit of creditors. The case of *Burrows* vs. *Lehndorff*, 8 Iowa, 96, is relied on as sustaining this position. It is said in that case that the fact that the insolvent debtor appoints a trustee, to whom he conveys his property for the benefit of creditors, in most instances, conclusively fixes the character of the transaction as a general assignment.

"In a certain sense it is true that Crittenden was a trustee. He had been appointed by the creditors as their agent to collect or secure their claims against Creager. To enable him to accomplish this they had assigned their claims to him. He had the legal title to them, but had no beneficial interest in any of them except that of Smith & Crittenden. He held the claims in trust, and was held to account for any money he might collect on them to the real owners thereof. He was not a trustee of Creager's appointing. He stood in the relation of a creditor to him, as he held the legal title to the claims, he could have maintained an action for their enforcement in his own name, and we know of no reason why he might not take a mortgage in his own name for their security."

Carson et al vs. *Byers et al*, 67 Iowa, 606.

The defendants, Byers & Eggers, merchants, on the 1st day of May, 1883, made a mortgage to Watters, one of their creditors, to secure $3,000. This mortgage was not recorded

until September 2d, 1883, and on the same day it was placed in the hands of the Sheriff for foreclosure, and he took possession of the property for that purpose.

At this time the debtors, Byers & Eggers, were owing about $3,500 to wholesale merchants in Chicago and elsewhere. Plaintiffs, one of such creditors, garnished the mortgagee, and claimed that the mortgage was fraudulent as against creditors, and was in fact a general assignment preferring creditors.

The court held against the plaintiff on both points, and says (page 611):

"A creditor has the right to secure his debt in good faith, even if he knows that his debtor has other creditors, and knows that the effect will be to prevent other creditors from collecting their claims.

It is urged by counsel for appellees that the mortgage operated as a general assignment for the benefit of creditors, which preferred one creditor to another, and that it is void under Section 2115 of the Code. We do not think this position is sound. It did not operate as a general assignment, because it did not include all the property of the firm, and none of the parties intended at the time that the mortgage was made that it should be operative as an assignment. For aught that appears, it was supposed at the time that the store would be carried on as before."

Gage & Co., et al vs. *Perry, Assignee, et al*, 69 Iowa, 605.

The defendants, Morris & Humphreys, were partners, doing business at Des Moines, Iowa. They were indebted to defendants, Baker, Jones & Harrod, and defendant Briscoe was surety on a note given by them to a bank.

On the 27th day of June, 1884, said debtors executed to said Baker, Jones & Harrod chattel mortgages to secure the debts owing to them severally. These mortgages covered their entire stock of merchandise. They also assigned to said Briscoe all accounts due them growing out of their business, to secure him for his said contingent liability.

On the same day said debtors executed a deed of general assignment for the benefit of all their creditors.

The plaintiffs, general creditors of said debtors, garnished the mortgagees and the assignee in the deed of general assignment, and claimed that the mortgages were fraudulent against creditors, and that the mortgages and deed of assignment constituted one transaction, and amounted to a general assignment preferring creditors.

The court held the mortgages did not constitute a part of the general assignment, and says (page 609):

"In determining the legal effect of the instruments, it is important to ascertain the intention with which they were ex-

ecuted. The creditors of Morris & Humphreys had no interest in or lien upon the property of the firm. The *jus disponendi* was in the members of the partnership. They had the legal right to pay or secure any one or more of their creditors, and their right in this respect was not at all affected by the fact that they were insolvent. Nor does the fact that the whole of their assets was devoted to the payment or security of but a portion of the debts that they were owing afford any ground of complaint to those creditors whose debts were unsecured. If, then, they executed the instruments with the *bona fide* intention of securing the mortgagees, and of indemnifying Briscoe against his liability on the note to the bank, the law will not give their act a different character from that intended. This has been the uniform holding of this court in similar cases. See

"*Fromme* vs. *Jones*, 13 Iowa, 480;
"*Lampson & Powers* vs. *Arnold*, 19 Iowa, 479;
"*Farwell* vs. *Howard*, 26 Id., 381;
"*Kohn* vs. *Clement*, 58 Id., 589;
"*Cadwell's Bank* vs. *Crittenden*, 66 Id., 237.

* * * * * * *

"The deed of general assignment to Parry was executed within one hour after the execution of the chattel mortgages and the assignment to Briscoe. Plaintiffs contend that the execution of all the instruments constituted but one transaction, and that the whole transaction amounted to an assignment for the benefit of creditors, each of the instruments being part of the assignment, and that such assignment is invalid, for the reason that a preference is given to the secured creditors.

This claim, however, is not sustained by the proof. The undisputed evidence is that Morris & Humphreys did not contemplate making a general assignment when they executed the other instruments, but that they determined to make an assignment when advised, after the execution of the mortgages, that the recordin of those instruments would probably have the effect to cause their unsecured creditors to institute attachments against them. In this respect the case is similar in its facts to—

"*Perry* vs. *Vezina*, 63 Iowa, 25;
"*Farwell* vs. *Jones*, Id., 316."

Garrell, Trustee, vs. *The Burlington Plow Co.*, 70 Iowa 697.

The Burlington Plow Co., being insolvent, made to plaintiff, as trustee, a mortgage to secure $10,000 to a savings bank, and $7,295.93 and $6,641.81 to one of the incorporators and the Secretary of the company. The note to the bank was indorsed by a director of the company. On the next day the said debtor, corporation, transferred to the National State Bank of Burlington notes and accounts to the amount of $40,000, the proceeds of which were to be applied, first, in payment of the sum of $18,000 owed by the company to that bank, and the remainder to the payment of the same indebtedness secured by said mortgage.

The Plow Company then made a general assignment for the benefit of its creditors.

The claims thus transferred and the property conveyed by the mortgage constituted substantially all the property of the plow company.

It was claimed by the unsecured creditors that these transactions constituted a general assignment preferring creditors.

The court held otherwise, and says (page 703):

"The defendants insist that the execution of the mortgage and the transfer of the notes and accounts to the National State Bank were made in contemplation of insolvency and therefore must be regarded as a general assignment, which, however, is void for the reason that it gives preference to certain creditors. The mortgage involved in this action was intended by all the parties to be, as it is in fact, a security for the debts therein mentioned and not as an absolute conveyance whereby the assets of the corporation are distributed among its creditors. The transfer of the notes and accounts to the National State Bank was also in effect the creation of a collateral security and was not an absolute payment. If these transactions be considered as one they are not to be treated, under the decisions of this court, as amounting to a general assignment for the benefit of creditors and therefore void because of preferences." (Citing several of the cases above mentioned.)

Aulman vs. *Aulman et al.* 71 Iowa, 124.

Lorenz Aulman and George Aulman were engaged for several years in the foundery business,

Lorenz Aulman was the active business manager of the firm, and, knowing that he could not discharge the liabilities, there were given to certain creditors of the firm the following instruments. To the plaintiff, Theodore Aulman, a chattel mortgage upon all the personal property of the grantors, including books of account and notes, and another mortgage to the same party upon certain real estate. One mortgage to Theodore Gulich upon certain real estate, a deed to Lena Rompano of certain real estate, and an assignment to William Aulman of a certain chattel mortgage held by the partnership against another party.

These instruments covered all the partnership and all the property of the individual members of the firm which was subject to execution or attachment. The instruments above enumerated were all executed on the 11th day of December, 1885, and filed for record two days afterwards. They were all prepared by the same person, and signed at the same time, and the evidence shows quite satisfactorily that they were all parts of a general design to secure the creditors to whom they were given. The parties secured were all relatives of the debtors.

Some of the unsecured creditors claimed that these conveyances constituted a general assignment preferring creditors and were void.

The court held otherwise, and says (page 125):

"It is not denied that an insolvent debtor may lawfully make such a disposition of his property as to entitle one or more creditors to a preference over others. This he may do by

mortgage, or sale or conveyance; and that the fact that such mortgages, sales and conveyances embrace all his property does not necessarily constitute the transaction a general assignment.

In *Van Patten* vs. *Burr*, 52 Iowa, 518, it was held that a number of mortgages to creditors and an assignment may be taken as one transaction and as constituting a general assignment. That case was determined upon a demurrer to the petition, in which it was alleged the mortgages and the assignment were all parts of the same transaction, and were intended by the insolvent to operate as a general assignment for the benefit of creditors.

In *Fromme* vs. *Jones*, 13 Iowa, 474, *Lampson & Powers* vs. *Arnold*, 19 Id., 479; *Farwell* vs. *Howard*, 26 Id., 381; *Kohn* vs. *Clement*, 58 Id., 589, and *Gage* vs. *Perry*, 60 Id., 605, and other cases this court has held that the execution of mortgages by insolvent debtors, with the *bona fide* intention of securing particular creditors, does not operate as a general assignment for the benefit of creditors; and some of the cited cases hold that the execution of a general assignment for the benefit of creditors, within a very short time after the execution of the mortgages, cannot be considered part of the same transaction.

In the case of *Burrows* vs. *Lehndorff*, 8 Iowa, 96, where several mortgages and deeds of trust were executed by a party in a state of insolvency and covering all of his property, by which certain creditors were preferred to others, each instrument conveying the same property and reciting that it was subject to the prior conveyance, and all filed for record on the same day, five minutes' time intervening between the filing of

each, it was held that the transaction constituted, in legal effect, a general assignment, and was void.

But in that case the mortgages and deeds of trust were executed by the insolvent without the knowledge of the creditors secured thereby, and it was not shown that the insolvent had creditors who were not secured in the manner above stated. One of the creditors repudiated the mortgage made to him, and attached the property of the insolvent.

It requires two or more parties to make a lawful contract, and it appears that, in the cited case, the insolvent executed the mortgages and deeds of trust and put them on record without consultation with the creditors he intended to secure. Their relation to the transaction was the same as they would have had to a general assignment. It might well be held, upon such a state of facts, that the transaction was a general assignment.

The facts in the case at bar are quite different. The creditors secured by the mortgage were *bona fide* creditors. The evidence shows that from the time their debts were contracted it had been contemplated by the parties that they were to be secured. It is true that Lorenz Aulman, one of the insolvent partners, sought out the creditors and offered the security. This was done by a personal interview with one of them and by mail with another, and by telegraph with another. All of them assented to the arrangement, and accepted the security offered. The transaction is conclusively shown by the evidence to have been intended by the debtors as security to their creditors, and, as is said in *Gage* vs. *Perry*, *supra*, "they had the legal right to pay

or secure any one or more of their creditors; and their right in this respect was not at all effected by the fact that they were insolvent. Nor does the fact that the whole of their assets was devoted to the payment or security of but a portion of the debts they were owing afford any ground of complaint to those creditors whose debts were unsecured."

We think it is quite clear that the transaction cannot be held to be a general assignment.

Van Patten & Marks vs. *Thompson et al*, 73 Iowa, 103.

The defendant, Thompson, was engaged in the grocery business at Davenport, Iowa. He made at the same time mortgages to three of his relatives, covering all his property, and to secure an aggregate amount of more than the value of the property. It was agreed that the mortgagees were to take immediate possession of the mortgaged property, dispose of the same and apply the proceeds to the payment of their debts. Subject to these mortgages he made a mortgage on the same property to plaintiffs, his creditors. Plaintiffs brought their suit to set aside the prior mortgages, and claimed that they amounted to an assignment preferring creditors. The court held the prior mortgages valid, on the ground that the mortgagor did not intend to make an assignment, and say (page 105):

"Now, if his judgment, however mistakenly formed, was that the goods would prove to be more than sufficient to secure the defendants, then he did not execute the mortgages given

prior to plaintiffs' mortgage with the intention of making a complete disposition of his property; and if not he did not intend to make what can be said to be virtually an assignment. It is not uncommon we think for a person to mortgage all his property, believing that the property will more than pay the mortgage debt, when it proves, in fact, to be insufficient. It would not be proper for us to hold, at the instance of any unsecured creditor who might see fit to make this claim, that such a mortgage constitutes an assignment. What shall a creditor seeking security do if he believes that there is only enough property to secure him, and the debtor believes otherwise, and refuses to make an assignment under the statute? The creditor seeking security cannot compel an assignment, and if the debtor, over estimating the value of his property, refuses to make an assignment, the creditor has only to accept such security as he can get."

Bolles et al vs. *Creighton et al*, 73 Iowa, 199.

The defendant, Creighton, being largely in debt and hopelessly insolvent, commenced the transfer of his property to his creditors by bills of sale and deeds on the 2d day of June, 1885, and continued executing instruments of that character on the next day. Each of these instruments transferred specific property to a named creditor, and no two of them embrace the same property, either real or personal. It appears to have been his purpose to parcel out his property to such of his creditors as he desired to secure. After doing this, and on the night of June 3d, 1885, he executed a general assignment of other property for the benefit of his creditors. This general assignment was not then delivered to the assignee named there-

in. It was left by Creighton with the notary public before whom the several instruments were acknowledged, and who was employed by Creighton for the purpose of transacting the business for him. The notary was instructed by Creighton to hold the assignment until he could go East to see his creditors; and if he could arrange his affairs the instrument was not to be delivered at all. Creighton did not come back, and on the 9th of June the notary filed the general assignment for record.

The plaintiffs, unsecured creditors, of Creighton, sought to have the bills of sale and deeds made the day before the making of the assignment decreed to be a part of the assignment, and all the transfers therefore void. This the court refused, and say (page 203):

"In other words it is sought by the plaintiffs to make this statute perform the duty of making them preferred creditors rather than the appellants, and to the extent of requiring defendants to pay them every dollar received for the property made over to them by Creighton."

And on page 204:

"By accepting the property upon the terms of the bills of sale their claims against Creighton were paid, and the payment was made before the general assignment had any operative force, before it was delivered and while it was still under the control of Creighton and in the hands of his agent. It is well settled that such a transaction cannot be held void as being connected with a general assignment. It has always been held

by this court that such a transaction is not void under Section 2115 of the Code. As is said in *Van Patten* vs. *Burr*, 52 Iowa, 518.

"The insolvent, as long as he retains the *jus disponendi* of his property, may appropriate it to the payment of his debts, and may prefer creditors. He may use all his property in this way, or he may so use a part, and make a general assignment of the remainder."

And see, also, *Lampson* vs. *Arnold*, 13 Iowa, 479, and other Iowa cases cited.

Loomis & Son vs. *Stewart*, 75 Iowa, 387.

In this case the debtor, Stewart, made an assignment, which conveyed to the assignee "all of the personal property, rights and credits belonging to the assignor and not exempt from execution, and it empowers him to sell and convert the same into money, and pay the same to the creditors of the assignor in proportion to the amount of their several claims."

About one hour before this instrument was executed, Stewart and his wife executed to the Delaware County Bank a conveyance of forty acres of land, in payment of a debt he owed the bank.

When this deed was made it was left with the attorney who prepared the deed of assignment, with a request by Stewart that he deliver it to the bank, which the attorney did about

four hours after the delivery of the deed of assignment to the assignee and the acceptance of the trust.

Plaintiff, an unsecured creditor of Stewart, attached the assigned property, and claimed that the whole transaction was in substance a general assignment preferring creditors. The court held it was not, and says (page 390):

"But the right of a debtor, in the absence of statutory restrictions, to make a partial assignment for the benefit of creditors has always been recognized. No right or interest in the property of the debtor accrues in favor of the creditors by virtue of the fact merely that they are creditors, but he may make any disposition of it he chooses, provided, only, that such disposition be made with an honest intent and for a lawful purpose. He may lawfully pay or secure one or more of his creditors to the exclusion of others, and he may convert all or any portion of his property into money for that purpose.

"Now our statutes have not undertaken to restrict the debtor as to the disposition of his property for the payment or security of his debts, except in the case of a general assignment, and the single limitation there prescribed is that such assignment can be made only for the benefit of all the creditors in proportion to the amount of their respective claims—Code, Section 2115.

The whole subject was elaborately considered in *Lampson* vs. *Arnold*, 19 Iowa, 479, and it is there distinctly announced that the common law right of an insolvent to make a partial

assignment for the benefit of creditors is in no manner affected by the statute.

Under that holding the assignment in question would not be invalidated, even if the deed to the bank never became operative.

King vs. *Gustafson et al.* 80 Iowa, 207.

In this case the debtors conveyed all their property to one of their creditors, with immediate possession, with authority to sell the same, and from the proceeds to pay taxes, insurance and expenses: then to pay their debt to himself, and then to certain other creditors in the order named, *preferring* such creditors in the order named in the instrument of transfer. The instrument contained no defeasance clause, and was in every respect a general assignment preferring creditors and is so held by the court.

Bradley vs. *Bischel*, 46 N. W. Rep. 755.

This case holds that, although the purposes and intentions of the assignor may have been fraudulent, this can not defeat a valid assignment for the benefit of creditors that the interests of the creditors cannot be affected or defeated in that way.

It is obvious from an examination of the foregoing cases, that the Supreme Court of Iowa holds, that to bring any con-

veyance or conveyances within the prohibition of said Section 2115 of the Code, it must appear—

First: That it was *intended* by the debtor, at the time of the transaction in question, to in fact make a general assignment, prefering creditors—and in addition—

Second: That the conveyance or conveyances, made at substantially the same time, *in fact* amounted to a general assignment of substantially all the property of the debtor, and that the effect was to prefer his creditors.

Third: That conveyances of his property by a debtor, knowing that he is insolvent, which are *intended* to secure his creditors, and not to be a final disposition of his property, are not held to be general assignments, although such conveyances may cover substantially all the property of the debtor, and may have the effect to prefer creditors.

We think these decisions clearly show that the Judge of the Circuit Court correctly construed the statute in deciding this case. (Record, page 340).

Following these decisions of the Supreme Court of Iowa, it was held that, to invalidate the general assignment, it must be shown that the alleged preferences were made, not with an intent to *secure* or *pay* the creditor, but with intent that they should be a part of a general assignment preferring creditors.

We will now consider each of these alleged preferences.

THE CHATTEL MORTGAGE TO CHARLES HILL.

Mr. Hill had for several years endorsed notes at the Bank for the accommodation of Ott, to the amount of $3,000.00. (Record, pages 256-281.)

A short time prior to February 20th, 1886, some of the notes had to be renewed, and Hill asked Ott for security, which Ott promised to give—and on the 20th of February Ott made the mortgage in question, and within two or three weeks gave it to Hill. Hill testifies that from what Ott said, he inferred that Ott did not wish to have the mortgage recorded. (Record, page 259.) And Ott testifies that he asked Hill not to record it, and that his reason for doing so was that it would hurt his credit. (Record, page 282.)

Hill testifies that several days before the assignment Ott told him he might put the mortgage on record if he wanted to, and that he did record it on the 26th of April, the day before the assignment.

There can be no question but that the mortgage was given for a good and valid consideration.

The contingent liability of Hill as endorsor was a good consideration for the mortgage.

Duncan vs. *Miller*, 64 Iowa, 223-226.
Gibson vs. *Warden*, 14 Wall., 244.

And it is stipulated in this case that Hill subsequently paid the last of these notes at the Bank. (Record, page 255.)

There is not a word of evidence which even tends to show, that, on the 20th of February, 1886, when Ott made this mortgage, he contemplated insolvency or the making of an assignment. All the proof shows the contrary.

From the 20th of February, down to the very day of the assignment, April 27th, he carried on his business precisely as usual. He bought about the same amount of goods. (Record, page 89, bottom.)

He paid about the usual amount on his indebtedness. (Record, page 81.)

The evidence of his book-keeper and cashier shows that between February 20th and April 27th, 1886, he actually paid on his indebtedness the sum of $61,326.13. (Record, page 81, and Exhibit No. 26, page 122.)

The evidence also shows, that, between the 20th of February and the 27th of April, 1886, Ott paid the plaintiffs, on his indebtedness to them, $12,172.38, and that during that time he purchased from them lumber, etc., to the amount of $8,977.86; thus reducing his indebtedness to plaintiffs $3,194.52, after, they claim, he had made up his mind to make an assignment. (Record, page 105.)

The evidence further shows (and it is undisputed) that on

the 10th of April, 1886, the plaintiffs received by mail, a statement from Ott of his financial condition. This statement was dated March 29th, 1886.

On the 12th of April, 1886, Mr. Beidler, the secretary and credit man of the plaintiff was at Davenport, and made a full examination into Ott's financial condition, and tried to get Ott to give plaintiff security by bill of sale, mortgage, or judgment note, which Ott declined to do. And at that time Ott insisted that he would be able to "pull through," and Beidler testifies that he went home hoping that Ott might be able to do so.

See evidence of Beidler, Record, pages, 135, 136, 137, 138, 145, 148, of Heesch, page 86, and of Ott, pages 288, 304, 305.

Mr. Beidler says (Record page 148):

"Intg. 123. Why didn't you sue out an attachment when you were here about the 10th of April, 1886, when you found out?

Ans. I was in hopes that Mr. Ott could get along and we might get our account without legal measures being taken.

Intg. 124. Did he tell you at that time that he thought he would pull through?

Ans. Yes sir."

This is the conclusion Mr. Beidler came to after he had received a financial statement from Mr. Ott, and had spent a day in examining his books of account.

The evidence shows conclusively, that even as late as April 12th, 1886, Ott did not dream of an assignment, that he was very hopeful of escaping insolvency; and that Beidler after fully investigating his affairs, went back to Chicago hoping that Ott would be able to pull through and finally pay his debts.

But it is claimed that when the Hill mortgage was recorded on the 26th of April, the day preceding the assignment, Ott intended to make an assignment, and that therefore the mortgage became a part of the assignment, and a preference.

The only *positive* or *direct* evidence as to when Ott first determined to make an assignment, is his own.

He says, (Record, page 282, bottom):

Intg. 64. You may state when you made up your mind to make said assignment?

Ans. On the 27th of April, in the morning.

Intg. 65. The 27th of April, 1886?

Ans. Yes."

He says (Record, pages 294, 295) that he first consulted an attorney about his affairs, on the 26th of April, but that he did not conclude what he would do until the morning of the 27th.

This direct testimony is consistent with all the facts and circumstances connected with the transaction. There is nothing shown by the evidence from which it can be fairly inferred that Ott had come to any conclusion as to what he would do, or whether he would do anything, before the morning of the 27th of April.

He says (Record, pages 283, 284) that he felt on the 26th, that, unless he could do something, he must stop payment.

That was as far as he went on that day. After thinking over it for a night, and again consulting his attorney, he concluded to do the only honest thing he could do—make a general assignment.

The circumstance of his telling Chas. Hill and Blick Peters, on the 26th of April, that they might record the Hill and Kloppenburg mortgages does not justify an inference that he then intended to make an assignment.

These mortgages, as between Ott and the mortgagees, were entirely valid without being recorded.

Code of Iowa, Section 1923.

As the assignee took the property subject to all equities against it in the hands of Ott, the mortgages were entirely valid as between the assignee and the mortgagees, whether recorded or not.

Meyer vs. *Evans*, 66 Iowa, 179–183.
Hauselt vs. *Harrison*, 105 U. S., 401.
The Davenport Plow Co. vs. *Lamp*, 80 Iowa, 722-725.
National Bank vs. *Life Ins. Co.*, 104 U. S., 54.

The recording of these mortgages did not protect the mortgagees as against the assignee.

If Ott is to be presumed to have understood the legal results of his acts, he could not have thought: "Now I will have those two mortgages recorded, so that the assignee can not take the property released from their lien," for the assignment could not have that result.

If, as Ott says, he felt on the 26th that he would be compelled to stop payment, and feared an attachment, he would naturally want these mortgages recorded, and if we are to indulge in inference, the only natural and legitimate one is that which is consistent with and corroborative of the positive evidence.

THE CHATTEL MORTGAGE TO ADDIE KLOPPENBURG.

This mortgage also bears date February 20th, 1886. (Record, page 39.)

Addie is a grand-daughter of Geo. Ott, and a minor.

Ott was appointed guardian of her property by the Probate Court of Scott County, Iowa, in 1874, when she was less than one year old.

The records of said Probate Court, in the matter of her guardianship are in evidence (Record, page 199) and show all the facts.

Prior to the 20th of February, 1886, Ott had put about $3,500.00 of her money in his hands as her guardian, into his business.

On the 30th of September, 1885, Ott was ordered by the Probate Court to invest said money of his ward in mortgage security. (Record, page 206). And in pursuance of said order he did on the 20th of February, 1886, make and deliver to Blick Peters, the said mortgage. Peters was acting as attorney for the estate of said child. (Record, pages 282, 288 and 49).

On the 26th of April, 1886, Ott asked Peters to have the mortgage Recorded and he did so. (Record, page 51).

Ott told Peters he could not give real estate security. (Record, page 52). So he did the best he could, gave a mortgage on personal property. The evidence shows that all his real estate was already mortgaged. He gave this mortgage

simply because the Court ordered him to, and for no other reason.

There is not a word of evidence in the Record, which tends in the slightest degree to connect this mortgage with the assignment.

The recording of it on the 26th of April, did not in the least change the legal position of the parties to it, or in any way prejudice the rights of Ott's assignee or creditors.

The money of this child in the hands of her guardian, was a *trust fund* and when Ott invested it in his business, it became apparently a part of his estate, then her lien for this money become impressed upon his whole estate; and as between Ott or his assignee in *bankruptcy* or creditors, and the minor, her lien was just as good *without* a mortgage as *with* one. The giving of the mortgage and recording of it had no legal effect whatever.

This has been repeatedly held, not only in this Court, but in the Supreme Court of Iowa.

Nat. Bank vs. *Life Ins. Co.*, 104 U. S., 54.
The Davenport Plow Co. vs. *Lamp*, 80 Iowa, 722.
McLeod vs. *Evans*, 66 Wis., 401.
Pennell vs. *Deffell*, 4 D. E., G. M. & G., 372.
Knatchbull vs. *Heallett*, The Law Reports, Ch. Div. 696-709.

We submit that there can be no reasonable question as to the correctness of the decision of the Circuit Court upon this point. (See Record, page 345).

THE PAYMENT TO CHRIS. MUELLER.

Ott sold, substantially, all his goods on a credit of 30, 60, or 90 days.

When he had sold a bill of goods in this way it was his habit to draw a time draft on the purchaser, and use this draft in paying his debts. (Record, page 83).

He owed Christ. Mueller about $9,000.00. For some time prior to April 26th, 1886, Mueller had been dunning him for payment, and Ott told his book-keeper that if he could give Mueller something to do so. So on the 26th of April the book-keeper gave Mueller drafts on customers for goods sold to the amount of $1,239.46. (Record, pages 60, 83, 314).

This left still due to Mueller about $7,200.

Mueller was running a saw mill near Ott's factory, and had been at Ott's place frequently for money. There is nothing in the payment out of the ordinary way, and there is nothing to dispute the evidence of Ott that at the time he made it, he had no idea of making an assignment.

THE PAYMENT TO T. W. McCLELLAND CO.

On the 26th of April, 1886, Ott gave T. W. McClelland Co. a draft drawn by him on a customer for goods sold for $660.80, to apply on a debt of about $900, which Ott owed them. (Record, pages 170-179).

The facts are as follows:

McClelland & Co., were builders, at Davenport, and both they and Ott used wire for making window screens. In January, 1886, Ott made an arrangement with them that when they should order their wire from Chicago, they should include his own order with theirs, and thus, by making the order a large one, secure a better price. (Record, pages 275-316).

McClelland & Co., ordered the wire, and when it was received had Ott's part delivered to him. This was done as an accommodation to Ott, and without any profit to McClelland & Co. (Record, pages 275-316).

For some time prior to the time of the giving of said draft, Geo. P. McClelland, one of the firm had been urging Ott to pay for his part of the wire. This is testified to by Ott, (Record, pages 316-317,) and by Heesch his book-keeper, (Record, pages 274-275,) and is not disputed.

All the business, except the delivery of the draft in part

payment, was done between Ott and Geo. P. McClelland. The draft was handed to Thomas W. McClelland.

The plaintiff called Thomas W. McClelland as a witness, and he testified that when Ott brought in the draft, he said he was in trouble, or expected to be in trouble and did not propose to go back on his friends. (Record, page 170). Mr. Ott was called and denied that he said any such thing. (Record, pages 316-317.)

Thomas W. McClelland heard the evidence of Ott in denial, and at once went to his place of business and found one, Gartside, an employee of the McClelland's, and *read his own testimony over to him* (Record, page 188) and Gartside came in and testified that he was in a back room at the time at work on some drawings, and heard what Ott said, and remembered just the words McClelland had sworn to, and had read over to him, and nothing more.

T. W. McClelland neglected to tell Gartside that Geo. P. McClelland was out of town at the time the draft was delivered and was therefore *not* present. And so Gartside swore that Geo. P. was there; and he looked into the room and *saw* Geo. P. there with Ott and Thomas W.

This conversation took place April 26th, 1886, and the evidence was given in June 1887, and Gartside says his attention had not been called to the conversation during all that time.

He says Ott was in their place for half an hour, and he is not able to remember another word he said. He could not give the name of another person who was in the office that day or another word that was said there on that day.

Ott says he was not there over five minutes. (Record, page 317).

Ott denies that he said anything of the kind, and we believe he tells the truth.

When there is $40,000 at stake in a law suit, it seldom happens that some witness cannot be found who has heard some one say something.

This was not a sale of goods by McClelland & Co. to Ott on credit. But they had bought the goods on their own credit as an accommodation to Ott; and it is not at all strange that Ott should be anxious to pay them.

But suppose Ott had used the words attributed to him; it simply shows what no one has disputed, that he was financially embarrassed, and did not know what he should do, or what might happen; and McClelland & Co. had been urging him for payments, and he had promised to do something for them, and did the best he could. And Thomas W. McClelland *returned the kindness* by at once reporting the matter to his attorney, Mr. Cook.

There is nothing connected with this transaction from which

an inference can be drawn to rebut the positive evidence of Ott, that on the 26th of April he did not intend to make an assignment.

All the facts and circumstances in evidence in this case, show that Ott had not at any time been preparing himself to make an assignment.

He continued his business down to the day of his assignment just as he had always done.

For any number of days you may please to select before the assignment, he paid just about the same amount on his debts as usual, and bought no more goods than usual. (Record, pages 89-90.)

His book-keeper deposited all money received in the bank, and Ott took nothing out of the business for himself, or for any member of his family. There was $400 in the bank at the time of the assignment, which Ott might have drawn out for the expenses of his family, but did not, and it was turned over to the assignee. (Record, page 84.)

There was a mortgage on his homestead for $3,000.00 which he might have paid off but did not. (Record, pages 283-167-168.)

Plaintiff began selling goods to Ott in 1882. (Record, page 131.)

Down to the time of the assignment they had sold him goods to the amount of $180,804.40. (Record, pages 82-142.)

At the time of the assignment Ott owed plaintiffs $37,191.69. (Record, page 139.) So that Ott must have paid plaintiffs in cash, in a little over four years, the sum of $143,612.71.

The evidence shows that on the 11th of April 1886, only sixteen days before the assignment, the plaintiffs, after a careful examination of Ott's books of account, and knowing of all his other indebtedness, tried to induce him to prefer them as creditors by a mortgage or confession of judgment. (Record, pages 135-145.)

We suppose this, in the estimation of plaintiff's would have been perfectly legal and proper.

Ott did not think it would be just to his other creditors, and refused to do it.

At this time Ott undoubtedly believed that his assets would pay or nearly pay his debts.

On the 14th of May 1886, his assignee filed in the Court, under oath, an inventory and valuation of the property which had come into his hands as assignee, and also a full list of the creditors. (Record, pages 262-271.)

This valuation, not including the stone quarry, amounts to $104,612.03. (Record, page 263.)

The total amount of claims filed within three months, the limit of time by the Iowa statute, is $111,226.19. (Record, page 269.)

And the total amount of all claims is $161,445.35. This is shown by adding the amounts of the schedules on pages 269 and 270 of the Record.

These figures show that Ott, with his limited and uncertain knowledge of the precise state of his financial affairs did not consider himself hopelessly insolvent, and that he believed down to the very last that he would be able to pull through.

Plaintiffs show that Ott paid off his help at the factory the day before the assignment; but it appears that this was the regular day in the week for paying them. (Record, page 286.) And then their wages would have been preferred claims under the statute.

Chapter 124. Acts of 20th General Assembly of the State of Iowa.

Section 1. "That upon making order for the distribution of the assets in the hands of the assignee of an insolvent, as provided in section 2122 of the Code, the Court shall order to be paid in full, as a preferred claim, the earnings of any creditor for his personal services rendered to the assignor at any time within 90 days next preceding the execution of the assignment."

IV.

The alleged false statement of Ott as to his financial condition.

Plaintiff has taken a great deal of evidence in an attempt to show that two statements made by Ott of his financial condition in 1884 and 1885 were not correct.

The main discrepancy claimed is in a statement made in January 1885, and is in the amount which Ott stated he owed. (Record, page 117.)

Ott says in his evidence that he made up the items for this statement himself, and that he understood that Mr. Beidler only wanted what he owed other people, as he knew very well what was due plaintiff. (Record, page 284, 285, 301.)

Considering Ott's ignorance of book-keeping and business methods, this is not improbable, and the addition of the amount Ott owed plaintiff at the time, about $33,000 would make this statement not far from correct. (Record, page 80.)

Besides, when plaintiff received this statement, it must have known, that, either Ott owed no one but it, or that he had not included all his indebtedness in the statement.

But admitting that the said statement was not correct, and

that Ott knew it, it does not invalidate the assignment. Plaintiff might have replevied its goods, if it sold any on the faith of the statement, but it cannot now take the proceeds of not only its own goods, but also of other creditors, in order that its claim may be paid in full.

There is not a word of evidence to show how much of the fund in the hands of the assignee come from the sale of property purchased by Ott from plaintiff.

It is not claimed in plaintiff's bill of complaint in this suit that the deed of assignment is invalidated by any such false representations as are attempted to be shown by the evidence.

So we claim that none of this evidence is material as tending to prove the allegations of plaintiff's bill.

Neither is there any principle of law or equity upon which it can be held that such alleged false statement would render a subsequent assignment by the debtor invalid.

In the case of *Straus* vs. *Rose*, 59 Md., 525-533, this point was made against an assignment, and the Court says:

"And even if she had fraudulently contracted debts within the meaning of the act of 1864, this would not affect the assignment, unless there was some connection between the debts thus contracted and the assignment itself, and of this there is not a particle of proof. On the contrary, she con-

tinued to buy and to pay as usual up to the very day when the pressure of creditors forced her to make the conveyance. If she had fraudulently contracted debts with the appellants, they had a right to the writ of attachment under the act of 1864; but they had no right under the writ to take property which she, prior to the issuing of the writ, had conveyed in trust for the benefit of creditors."

The case of *Horwitz* vs. *Ellinger*, 31 Md., 492, is also directly in point. In that case the plaintiff made a deposit with the judgment defendants, bankers, of some $5,000, and on the same day the bank closed its doors and never resumed, but on the day following made a general assignment for benefit of its creditors. The plaintiff sued out an attachment, garnished the assignee, and claimed that his debt was fraudulently contracted, and as to him the assignment was fraudulent and void. We quote what the Court says on this point, as it covers the entire ground. (Page 503:)

"He sought to avoid the effect of the deed, as against himself, by treating it as the consumation of the fraud by which his money was obtained from him on the day previous to its date. In this view the second prayer was offered, whereby the jury were instructed that they were at liberty, upon consideration of all the facts and circumstances surrounding the transaction, to find 'that the execution and delivery of said deed were, and were meant to be, a consumation of the fraud committed by receiving plaintiff's money, and if they so find, the plaintiff is entitled to recover on the issues joined,'" etc. Should such an instruction have been granted?

It is clear—if the money sued for was obtained from the appellee by means of a fraudulent contract, it required no consumation by the subsequent execution of the deed to entitle him to the benefit of the provisions of the act of 1864. If, on the contrary, it was not so obtained, the subsequent execution of the deed, with whatever motive, would not render fradulent the contract previously made. The contract of deposit and the deed of assignment are two different and distinct acts, and their validity must be determined according to their respective merits.

The assignment, to constitute a sufficient ground of itself to maintain the attachment against the defendants, under the act of 1864, must have been made *with an intent to defraud their creditors*. But a general assignment for the benefit of all creditors, such as the one before us, is not denounced by the law as fradulent, but on the contrary sanctioned and approved. That being so, is it competent to the appellee to vacate this assignment as to himself, while it may be good as against everybody else, by showing some particular motive in the assignors in making it? Clearly not. We are dealing with the *act* of the parties, and if that be such as the law authorizes and approves, the secret motives that prompted it are wholly immaterial.

Pike vs. *Bacon*, 21 Me., 280, 285.
Cranhooran vs. *Hart*, 21 Penn., 495, 500.

It may have been, and most likely was, the purpose of the assignors in making the deed to the avoid preferences that might have been obtained by attachment, in a race of eager dilligence

by dissappointed creditors. Such is generally the motive to the making of such an assignment. But though such was the motive, or even if it was to prevent the appellee from resorting to process to obtain such preference, the assignment is not the less valid. It was the right of the assignors to apply their property to the equal payment of all their creditors, and the appellee being in the category of creditor, can have no more favorable standing in respect to the property thus attempted to be applied, than any other of his class; and because his claim may have been specially in the contemplation of the assignors when making the deed, it affords him no ground to set it aside.

But it is contended for the appellee, that the debt being fraudulently contracted, his right to proceed by attachment is fixed and indefeasible, and that it was not within the power of the debtor to defeat such right.

That may be conceded. The right to sue out the attachment may exist, but the right to seize other people's property under it is quite a different thing. * * * *

Upon the appellee's assumption the question is: Did the fraudulent making of the previous contract deprive the debtors of the right to make a general assignment of all their property for the equal benefit of all their creditors, including appellee? That it did not, we think, is entirely free from doubt. To hold that it did, would, in a great measure, defeat the policy of that law, in allowing and encouraging insolvent debtors to devote, by assignment, all their property to an equal distribution among their creditors.

Few cases would occur, in which some creditor, in order to gain a preference, would not at least attempt to make it appear that there had been a want of *bona fides* in the debtor's dealing with him. To open the door to such an inquiry and make the validity of the assignment depend upon the establishment of such a fact, would at once beget litigious struggles among creditors, in which those conscientious would often be victimized to the less scrupulous litigants."

Plaintiff has taken a great deal of evidence to show that a stone quarry belonging to Ott is worthless. Suppose it is, how does that even *tend* to show that his assignment is fraudulent and void?

The evidence shows that Ott invested in this quarry from fifteen to sixteen thousand dollars. (Record, page 280.) This ought to be conclusive proof that Ott *believed* it was valuable property. He was probably mistaken, but he is not the only man who has made bad investments in mining property.

CONCLUSION.

The complainant in this suit is asking that a court of equity shall give to it the entire assets of the insolvent, to the exclusion of all his other creditors.

His Honor, the Judge of the Circuit Court, has stated the

matter very tersely in the opinion filed in this case as follows: (Record, page 340.)

"If we overturn the assignment the result will be that all the property will go to one creditor, and thus at the instance of that creditor the Court will set aside the assignment because of preferences to a comparatively small amount and practically give a preference to this complaining creditor to a sum sufficient to absorb the whole property. This would certainly be an inequitable result. It would be in the highest degree inequitable in another view. The highest equity in the distribution of the property of insolvents is equality.

The fundamental doctrine of equity in dealing with insolvent estates is that they should be distributed *pro rata* to creditors. The reason of this is obvious. All creditors contribute *pro rata* to the effects of insolvents. If, therefore, all cannot be paid in full it is but common justice that they should receive back of what they have contributed a due proportion of their respective contributions. To pay one in full out of the common contributions and leave all others unprovided for is shocking to our sense of justice. Equity, therefore, abhors preferences. Equality is equity. Equity cannot be made to depend upon fleetness of foot. Diligence is not discouraged in equity, but a mere race of diligence by one creditor to secure all himself, to the absolute exclusion of all other not less meritorious creditors, is discouraged and discountenanced in equity as repugnant to natural justice. Nevertheless, where one creditor has secured a right to prior payment by attachment, or otherwise, or a legal preference by the voluntary act of a debtor, the court of equity will not disturb, but rather uphold, these legal

rights, for ordinary equity follows the law; but in order to induce such action by a court of equity a clear and satisfactory, not doubtful, case must be made out and established by the party seeking such unjust advantage. The burden is upon this complainant, in order to entitle itself to a decree setting aside the written assignment, to show by satisfactory evidence:

First. That the written assignment and the preferences complained of were one and the same transaction.

Second. That in this transaction it was the purpose and intention of the assignor to make a general assignment of his property and effects for the benefit of his creditors."

In considering the proofs offered by complainant, the Court further says (Record, page 343:)

"All that I can now say is that the burden is upon the complainant to establish the fact of Ott's unlawful intention; that in order to justify a decree giving the whole property to the complainant, to the exclusion of all others, clear and satisfactory evidence of the fact in question should be given to the Court, and that in my opinion the evidence to that purpose is not satisfactory. Counsel for the complainant in more than one place repeat the argument that Ott knew of his insolvent condition, and that 'something must be done,' and that 'he made both the preferential securities and the assignment under the impulse of such knowledge.'

This argument is not convincing to my mind. It is not

improbable that Ott, knowing his embarrassed condition, felt, in the language of counsel, 'that something must be done,' but what that something was which he had in contemplation is not at all apparent. It was not necessarily a general assignment. He may have had in view an extension of time or the assistance of friends. An assignment is bankruptcy, a total collapse of all the assignor's business; and this was probably the very calamity from which Ott averted his attention, hoping even against hope for some better solution of his difficulties. We know very well with what delusive hopes men in Ott's situation deceive themselves and how they strive to the last to avert an acknowledgment of bankruptcy, which is commercial death."

We respectfully submit that the conclusions arrived at by the circuit court in this suit, are correct, and should be affirmed.

JOHN C. BILLS,
Solicitor for Defendants,
Appellees.